रजिस्ट्री सं डी.एल.-33004/93 REGD. NO. D.L.-33004/93

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 361] नई दिल्ली, शुक्रवार, जून 18, 1993/ज्येष्ठ 28, 1915
No. 361] NEW DELHI, FRIDAY, JUNE 18, 1993/JYAISTHA 28, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 18 जून, 1993

का.आ. 395(अ)—केन्द्रीय सरकार ने विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए विश्व हिन्दू परिषद, राष्ट्रीय स्वयं सेवक संघ तथा बजरंग दल (जिन्हें इसमें इसके पश्चात् विश्व हिन्दू परिषद्, राष्ट्रीय स्वय सेवक संघ तथा बजरंग दल कहा गया है) को भारत सरकार के गृह मंत्रालय की अधिसूचना संख्या का.आ. 900(अ), का.आ. 901(अ) तथा का.आ. 902(अ) तारीख 10 दिसम्बर, 1992 द्वारा विधि विरुद्ध संगम घोषित किया गया था,

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना संख्या का.आ. 933(अ) तारीख 30 दिसम्बर, 1992 के द्वारा विधि विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था, जिसमे दिल्ली उच्च न्यायालय के न्यायाधीश न्यायमूर्ति श्री पी.के. बाहरी थे,

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचनाओ को 8 जनवरी, 1993 को इस बात के न्यायनिर्णयन के लिए उक्त अधिकरण को निर्दिष्ट किया था कि क्या उक्त संगमो को विधि विरुद्ध घोषित करने के लिए पर्याप्त कारण था अथवा नही,

और उक्त अधिकरण ने उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियो का प्रयोग करते हुए विश्व हिन्दू परिषद् के संबंध मे अधिसूचना स. का.आ. 900(अ) तारीख 10 दिसम्बर, 1992 में की गई घोषणा

की पुष्टि करते हुए और राष्ट्रीय स्वयं सेवक संघ तथा बजरंग दल से संबंधित क्रमशः अधिसूचना संख्या का.आ. 901(अ) और का.आ. 902(अ) तारीख 10 दिसम्बर, 1992 में की गई घोषणाओं को रद्द करते हुए तारीख 4 जून, 1993 को एक आदेश दिया था;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में उक्त आदेश प्रकाशित करती है।

[सं. 11/12034/74/93-आईएस(डी)]

टी. एन. श्रीवास्तव, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 18th June, 1993

S.O. 395(E).—Whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), declared in Vishwa Hindu Parishad, Rashtriya Swayamsewak Sangh and Bajrang Dal (hereinafter referred to as VHP, RSS and BD) to be unlawful associations vide notification of the Government of India in the Ministry of Home Affairs No. S.O. 900(E). S.O. 901(E) and S.O. 902(E) all dated the 10th December, 1992, respectively;

And whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 5 of the said Act constituted vide notification of the Government of India in the Ministry of Home Affairs No. S.O. 933(E) dated the 30th December, 1992, the Unlawful Activities (Prevention) Tribunal, consisting of Justice Shri P. K. Bahri, Judge of the Delhi High Court;

And whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on the 8th January, 1993 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said associations as unlawful;

And whereas the said Tribunal, in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, made an order on the 4th June, 1993 confirming the declaration made in the notification No. S.O. 900(E) dated the 10th December, 1992 in relation to VHP and cancelling the declarations made in the notifications No. S.O. 901(E) and S.O. 902(E) dated the 10th December, 1992, relating to RSS and BD, respectively;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the said order, namely :—

ORDER

0.6.93 PRESENT :

Mr. R. K. Anand, Senior Counsel with M/s. Arun Birbal, Ashok Bhasin, Harsh Patni, Ashim Vacher, Munish Malhotra, Lovkesh Sawhni and Ms. Rekha Aggarwal, Advocates for the Central Government.

Mr. R. P. Bansal, Sr. Counsel with M/s. Alok Kumar and Sanjay Poddar, Advocates for the RSS.

Mr. L. R. Gupta, Sr. Advocate with Mr. Randhir Jain, Advocate for the VHP.

Mr. S. N. Marwah, Sr. Counsel with M/s. N. N. Gupta, D. R. Mahajan & Ms. Sneh Lata Gupta, Advocates for Bajrang Dal.

S.O. 901(E), S.O. 902(E) & S.O. 900(E)

ORDER

The Central Government vide its notification No. SAO 933(E) published in the gazette of India dated December 30, 1992, has constituted a Tribunal under Section 5 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'the Act') to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of myself as sitting Judge of the Delhi High Court for deciding whether or not there is sufficient cause for declaring Rashtriya Swayamsewak Sangh (hereinafter referred to as 'RSS'), Vishwa Hindu Parishad (hereinafter referred to as 'VHP') and Bajrang Dal (hereinafter referred to as 'BD') to be unlawful which have been so declared by the Central Government vide three separate notifications Nos. S.O. 900(E), S.O. 901(E) and S.O. 902(E), all dated December 10, 1992, and published in the Gazette of India (Extra-ordinary) of the even date. Three separate references as contemplated by Section 4 of the Act accompanied by three separate resume have been received by the Registrar of this Tribunal on January 8, 1993. Show-cause notices were issued to the said three organizations separately as contemplated by Section 4(2) of the Act and all these three organizations have filed separate replies to the aforesaid show-cause notices.

As common questions of facts and law were involved in all these three references, with the consent of counsel for the parties the proceedings were consolidated with the direction that the proceedings shall be recorded in the case of RSS.

In the notification dated December 10, 1992, pertaining to RSS, it was awarded that :

"Whereas the RSS has been encouraging and aiding its followers to promote or attempt to promote, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious communities;

And whereas the RSS has been making imputations and assertions that members of certain religious communities have alien religions and cannot, therefore, be considered

nationals of India, thereby causing and likely to cause disharmony or feeling of enmity or hatred or ill-will between such members and other persons;

And whereas the RSS Swayamsewaks had participated in the demolition of the structure commonly known as Ram Janma Bhoomi-Babri Masjid, situated in Ayodhya in the State of Uttar Pradesh, on the 6th December, 1992 and whereas for all or any of the grounds set out in the preceding paragraphs, as also on the basis of other facts and materials in its possession which the Central Government considers to be against the public interest to disclose the Central Government is of the opinion that the Rashtriya Swayamsewak Sangh is an unlawful association;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declare the "Rashtriya Swayamsewak Sangh" to be an unlawful association, and directs, in exercise of the powers conferred by the proviso to sub-section (3) of that section, that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect from the date of its publication in the Official Gazette."

In the notification of even date pertaining to Bajrang Dal, it was averred that :

"Whereas the Bajrang Dal has been encouraging and aiding its followers to promote or attempt to promote on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious communities;

And whereas the Bajrang Dal has been organizing exercises, drills or other similar activity intending that the participants in such activities shall use criminal force or violence or knowing it to be likely that the participants in such activity will use criminal force or violence against other religious communities;

And whereas the members of the Bajrang Dal had participated in the demolition of the structure commonly known as Ram Janma Bhoomi-Babri Masjid, situated in Ayodhya in the State of Uttar Pradesh, on the 6th December, 1992;

And whereas for all or any of the grounds set out in the preceding paragraphs, as also on the basis of other facts and materials in its possession which the Central Government considers to be against the public interest to disclose, the Central Government is of the opinion that the Bajrang Dal is an unlawful association;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the "Bajrang Dal" to be an unlawful association, and directs, in exercise of the powers conferred by the proviso to sub-section (3) of that Section, that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect from the date of its publication in the Official Gazette."

In the notification of the even date pertaining to VHP, it was averred that :

'Whereas Shri Vishnu Hari Dalmia, President of the Vishwa Hindu Parishad, in a meeting held in Delhi on the 8th November, 1992, declared that the Ram Janma Bhoomi temple would be constructed in the same way it was demolished by Babar and that Kar Sewaks were pressurising the leadership that they should be called not to construct the Ram Janma Bhoomi temple but to demolish the Babri Masjid;

And whereas Shri Ashok Singhal, General Secretary of the Vishwa Hindu Parishad, in a public meeting in Bilaspur on the 14th November, 1992, stated that Muslims would be taught the language of force in case they would fail to understand the language of reasoning;

And whereas Smt. Vijaya Raje Scindia, Member of the Governing Council of the Vishwa Hindu Parishad, in a press conference in Patna on the 23rd November, 1992, stated that Kar Sewa would be carried out with full determination, defying all restrictions, if required including even the Court orders. She also averred that the construction of the Ram temple was a matter of faith and it could not be confined to the jurisdiction of the judiciary. She also added that the temple would be constructed at all costs and for which the so-called Babri Mosque will have to be demolished;

And whereas Acharya Giriraj Kishore, Joint General Secretary of the Vishwa Hindu Parishad, in a press conference in Delhi on the 28th November, 1992, warned that in case legal battle and the politics came in the way of temple renovation at Ayodhya, direct action in repect of all other mosques which were built, after demolition of temple cannot be ruled out;

And whereas the Vishwa Hindu Parishad has been similarly encouraging and aiding its followers to promote or attempt to promote, on grounds of religion, disharmony or feeling of enmity, hatred or ill-will between different communities;

Whereas the followers of the Vishwa Hindu Parishad had participated in the demolition of the structure commonly known as Ram Janam Bhoomi-Babri Masjid, situated in Ayodhya in the State of Uttar Pradesh, on the 6th December, 1992;

And whereas for all or any of the grounds set out in the preceding paragraphs, as also on the basis of other facts and materials in its possession which the Central Government considered to be against the public interest to disclose, the Central Government is of the opinion that the Vishwa Hindu Parishad is an unlawful association;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the "Vishwa Hindu Parishad" to be an unlawful association, and directs, in exercise of the powers conferred by the proviso to sub-section (3) of that Section, that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect from the date of its publication in the Official Gazette."

A resume on RSS, VHP & BD containing the facts and allegations and the material relied upon for declaring the said three organizations as unlawful under the Act contains the allegations common to all the three banned organizations although separate resume had been sent with each reference.

The facts mentioned in the resume, in brief, are that RSS was constituted on Vijaya Dashmi Day in the year 1925 whereas VHP is the front organization of RSS and BD in its turn is the front organization of VHP and in this way these three associations are interlinked with each other. It was averred that a publication titled "Virat Hindu Sammelan" published by VHP makes reference to various activities undertaken by RSS and these activities are undertaken by various other associations which have been constituted out of the members of RSS, such as, Akhil Bharatiya Vidyarthi Parishad (ABVP), Bharatiya Mazdoor Sangh (BMS), Bharatiya Kissan Sangh, (BKS), Bharatiya Vanawasi Kalyan Ashram (BVKA), Bharatiya Janajati Sanskrit Manch (BJSM), Akhil Bharatiya Karyakari Mandal (ABKM) and Sanskar Bharti. It was pleaded that there are various factors based upon some documents which would establish that all these organizations are part and parcel of RSS. It was mentioned that Shri Balasaheb Deoras, Sarsanghchalak of RSS, is also one of the trustees of VHP and Sh. Moropant Pingle is a permanent invitee in the All India Executive of the RSS, whom is a member of ABKM and a life trustee of VHP and also a member of the Governing Council of VHP. He is also stated to be a trustee of Ram Janam Bhoomi Nyas. Similarly it was pleaded that Sh. Ashok Singhal is a member of ABKM and RSS and is a life trustee of VHP and General Secretary of VHP Governing Council and he is also a member of Ram Janam Bhoomi Nyas and had also been earlier a Pracharak of RSS and he has been participating in national level RSS conferences. He is also stated to be a member of the Temple Renovation Committee of the Kendriya Marga Darshak Mandal (KMDM).

It is further pleaded that Sh. Vishnu Hari Dalmia is a life trustee of VHP and the President of the Ram Janam Bhoomi Nyas whereas Sh. Sunder Singh Bhandari is a member of ABKM and RSS and Smt. Vijaya Raje Scindia is a life trustee of Ram Janam Bhoomi Nyas whereas Shri S. C. Dixit is the President of Uttar Pradesh VHP and member of the Governing Council of VHP and is also a life trustee of VHP and a trustee of Ram Janam Bhoomi Nyas. Mahant Ram Prakash Das is stated to be the General Secretary of the Ram Janam Bhoomi Nyas and also a member of KMDM and late Shri Hans Raj Gupta was stated to had been the RSS Pramukh for Delhi Unit and also one of the four committee of VHP. So, it was pleaded by the Central Government that these facts and the evidence which would be referred in the subsequent paragraphs of the resume would show that BD and VHP are part and parcel of RSS and the bodies created by RSS.

Referring to the evidence it was mentioned in the resume that some of the photographs taken at the last meeting of the RSS at Ujjain in October 1992 would indicate the integral association of the aforesaid leaders on a common platform and the important feature of the commonness of these organizations is that all important mobilization programmes of VHP were preceded or succeeded by a meeting of RSS and details in respect of which were mentioned in Annexure I to the Resume.

It was further averred that RSS and its other organizations referred to above are commonly called "Sangh Parivar" as there is a meaningful synchronisation of efforts between various constituents of "Sangh Parivar" in regard to the various programmes of mobilisation all over the country and such commonness between the various organizations is further established by the fact that the Vishwa Sambad Kendra/Media Centre having its head office situated at 69, North Avenue, New Delhi, is the main centre for dissemination of press releases and statements made by leaders of Sangh Parivar from time to time and it was mentioned that such leaders have been issuing statements in favour of VHP, BD, Bhartiya Janta Party (BJP), Ram Janam Bhoomi Nyas, Ram Janam Bhoomi Mukti Samiti, RSS, ABVP and Sri Ram Kar Sewa Samiti etc. Some of such press releases have been annexed with the Resume as Annexure II. It was pleaded that the commonness is also evident between VHP and RSS inasmuch as VHP has been using the office of RSS situated at Keshav Kunj, Jhandewalan Extension, New Delhi and also at other places in India.

It is the case of the Central Government that VHP was registered as an association by Registrar of Societies on October 13, 1966, although it had been constituted since 1964 with the aim and objects, inter alia, of consolidating and strengthening of Hindu society, protection, development and publicity of Hindu values of life; the establishment, maintenance, taking over and management of temples, maths etc preaching and teaching principles and practices of Hindu Dharma and culture; and to deffuse knowledge

and preach ethical principles and practice of Hinduism suited to modern times, but the activities of this organization are not confined merely to propagation of Hindu Culture and way of life but have been directed against the minority religious groups especially those belonging to the Muslim community.

It was alleged that the speeches and writings and other activities of the members and office bearers of VHP, as reported from time to time, have been intended to embitter the relationship between the Hindus and the minority communities and those speeches and writings have promoted communal disharmony and feelings of enmity, hatred and ill-will between different religious groups and communities. It is mentioned that in the speeches and writings, provocative phrases have been used for inciting the feelings of enmity and communal hatred among different communities and the said organization had gone to the extent of preaching the practice of violence for the purpose of making the minority religious groups conform to presumed standards of Hinduism|secularism and Indian values as interpreted by the said organization itself.

It was mentioned in para 6 of the Resume that some of the aforesaid speeches have been reported in the newspapers and there are others, of which the audio and video recordings were available which would be produced in evidence and details of such speeches and writings were incorporated in para 6(1) to (9) and copies of the same have been attached as Annexures III to XI and details of the same, in brief, are that a leaflet was published under the caption "Hinduon Saydhan" which stated that the mosques and dargahas built after the demolition of Hindu temples would not be allowed to remain. Another leaflet captioned "Hinduon Jago Desh Bachao" highlighted the alleged injustice done to Hindus mentioning that while the Hindu rulers built mosques and Churches, the Muslim rulers demolished temples and Hindus were systemetically being eliminated in Pakistan and Bangla Desh whereas no Muslim in India has spoken against such activities.

It was mentioned that Suruchi Prakashan situated at Keshav Kunj, Jhandewalan, New Delhi, belongs to RSS as it publishes various books of RSS and other organizations connected with RSS and one of such publications under the title "Ham Mandir Vahin Banayenge" published in 1989 contained a poem at page 13 which is objectionable.

Reference was then made to a pamphlet under the title "Chetavani" which makes reference to alleged injustice meted out to Hindus in the police firing at Ayodhya in the year 1990. Another leaflet captioned "Kya Ho Raha Jai Ayodhya Mein" is said to contain highly provocative material inciting the masses of Hindu community which also could generate ill-will, enmity and hatred towards other religious communities. Similar is the pamphlet under the title "Aatankwad Hinsa va Garibi" issued by one Shri A. Shankar and another leaflet titled "Kyon Chahiye Hame Ram Janma Bhoomi is stated to highlight the alleged special rights given to the Muslims and the Christians mentioning that during the last 43 years rule of Hindu Prime Ministers, the strength of the Muslims has increased because of the policy of appeasement and when Pakistan became an Islamic country, the India should have been declared a Hindu country and there should have been complete transfer of population at the time of the partition of the country.

"Samanway" is stated to be a publication of VHP issued in November 1989 wherein an article was published by Vijaya Trawakey mentioning that Hindus have been taught about the integrity of the nation but not the minorities and that the Government has been favouring Muslims even to the extent of changing the judgments of the courts and Muslim leaders are fanatic and take advantage of their religion.

Lastly, it was mentioned that Sh. H. V. Seshadri, Sah Sangh Sanchalak of RSS, has published a book in December 1985 in which he posed certain questions regarding "Pope's Visit to India" in which a defamatory language had been used in regard to whole of the Christian Community and its various leaders. Reference was then made to certain more leaflets which were on the same lines and copies of which were annexed as Annexures XII to XVII.

It is further averred in the Resume that VHP had launched a movement for the construction of Sri Ram Temple at Ayodhya at the place where structure commonly known as Ram Janam Bhoomi-Babri Masjid (hereinafter referred to as "the disputed structure") was situated and it mobilised support from Hindu masses and enlisted Kar Sewaks for the said purpose and the leaders of VHP, RSS and BD used common platform where S|Shri Ashok Singhal, Acharya Giriraj Kishore, Sadhvi Rithambra, Sadanadji Kekde and Smt. Vijay Raje Scindia gave in flammatory speeches in various parts of the country arousing the passions of the Hindu community for the construction of Shri Ram Temple at Ayodhya after removing the structure. Copies of the relevant speeches were attached with the Resume as Annexure XVIII.

It was alleged that on December 5, 1992, Sh Ashok Singhal in a Press Conference at Lucknow had stated that the construction of the temple would not be stopped now at any cost which appeared as news item in the Hindustan Times dated November 6 1992 and in other Press Conference at Lucknow reported in Times of India dated November 12, 1992, he had stated that the Supreme Court was not the sight body to decide, whether there was ever a temple at the disputed site at Ayodhya and he had also made a statement that a contingency plan had been kept ready in anticipation of police crack down on VHP leaders or dismissal of the State Government and his organization was determined to start a second battle for freedom to break the shackles on Ram Janam Bhoomi. Reference was also made to another speech made by him in a manmoth gathering at Bilaspur that no power on earth could stop Kar Sewa and the country would be divided and India would get converted into Pakistan which was published as news item in Nav Bharat, Raipur, dated November 14, 1992. He had also allegedly made a statement that Muslims would be taught the language of force in case they failed to understand the language of reason.

Reference was also made to another interview of Shri Singhal which appeared in Gujarat Samachar dated November 20, 1992, wherein he stated that no power on earth could prevent Kar Sewa from December 6, 1992 and any attempt to prevent Kar Sewa by violent action would have wide-spread reactions all over the country for which the Centre would be fully responsible. It was pleaded that the said statements were being made by the important leaders of RSS and VHP in wilful gross violation of the orders passed by the Allahabad High Court dated July 15, 1992, which had specifically forbidden the construction work at the disputed site.

Shri Ashok Singhal is again stated to have made a statement which was published in the Indian Express dated September 17, 1992, that he feared a communal holocart and if the construction of temple is allowed to continue an everlasting peace would result in this country and that Muslims should be taught to respect the majority Hindu sentiments.

It was pleaded that in 1989, the VHP had undertaken that they would abide by the orders of the court when Shilanyas ceremony was to be performed and in spite of such undertaking the aforesaid leaders had been making statements that such a matter could not be decided by the courts. A copy of the order of the court was annexed as Annexure XIX. It was mentioned that Sh. Singhal has asserted in his statements that faith would not come within the purview of the courts and the important office bearers of VHP and BD had been propagating by various means that they would not abide by the orders of the courts and had asked others also not to follow the orders of the courts as they were not concerned with such orders. It was pleaded that various members of VHP had also cast aspersions on the members of the judiciary.

Lastly reference was made to another Press Conference of Shri Ashok Singhal reported in 'Sambhav" dated November 20, 1992, mentioning that if the Kar Sewaks were subjected to any atrocities, they would face the same and the reaction to such action shall be countrywide for which 'Rao will be responsible'. It was pleaded that such statements had the effect on the one hand of organizing a large number of persons to reach Ayodhya for starting the Kar Sewa contrary to the orders passed by the Supreme Court and on the other hand had aroused their emotions.

Then reference is made to the statement of Acharya Giriraj Kishore, an important office bearer of VHP, reiterating the same views as expressed by Sh. Singhal in various fora and in his Press Coference reported in Dainik Jalte Deep dated November 29, 1992 and also in press release of Media Centre dated December 2, 1992, he had given a warning that if any hindrance was caused in the construction of Ram Janam Bhoomi, then direct action would be taken in respect of other 3000 religious places. Copies of the said publications were annexed as Annexures XX & XXI. It was averred that in another statement he had mentioned that the construction of the temple would continue till it was completed and Kar Sewaks were prepared to go to Jail and face bullets and to the similar effect he expressed his views in Press Conference at Pune on August 12, 1992, wherein he further stated that temple would be constructed on the original site at the place which Muslims claim to be Babri Masjid and Hindus claim to be Ram Janamsthan.

Then reference is made to Press Conference of Smt. Vijaya Raje Scindia, who is office bearer of VHP and life trustee of Ram Janam Bhoomi Nayas Samiti, wherein she stated that despite the stay order of the Court, Kar Sewa would start on the land acquired for the construction of temple at Ayodhya and she further stated that the construction of the temple is a matter of faith and is outside the purview of the courts and that structure of the mosque could be shifted to some other place. A copy of the same is attached as Annexure XXII. It was also mentioned that Sh. Vishnu Hari Dalmia, the President of All India VHP, in a meeting at Delhi on November 8, 1992, declared that Ram Janam Bhoomi temple would be constructed in the same way it was demolished by Babar and Kar Sewaks were pressurising the leadership that they should not be called only to construct the Ram Janam Bhoomi temple but should be called to demolish the Babri Masjid.

In respect of the RSS it was alleged that the RSS through its various constituents and office bearers had been encouraging and aiding its followers to promote or attempt to promote, on grounds of religion, disharmony and feeling of enmity, hatred and illwill between different religious communities, i.e. Hindu-Muslims, Hindu-Christians, etc. and RSS through its literature and public announcements had been making imputations and assertions that members of certain religious communities have alien religions and cannot, therefore, be considered nationals of India which has caused and likely to cause feelings of disharmony, enmity, hatred and illwill amongst the said communities. It was alleged that RSS Swayamsewaks had participated in the demolition of the disputed structure on December 6, 1992. It was further averred that RSS Sah Sangh Sanchalak through his communal address to the various constituents of RSS and their followers on Guru Purnima Day i.e. on October 5, 1992, had warned the Government not to test the patience of Hindus on the issue of construction of Shri Ram Mandir. Copy of the statement in this regard was attached as Annexure XXIV. It was further averred that the role of RSS during communal riots had been adversely commented upon in various judicial inquiries.

Reference has been made to press statement published in Sunday magazine dated December 6, 1992, of Sh. Vinay Katiyar, who is the Chief of the BD, wherein he mentioned that the construction of the temple would begin on December 6, 1992, there being court order or no court order and copy of the said magazine is Annexure XXV. It was also alleged that Sh. Vinay Katiyar had assured the Kar Sewaks that he had raised one lakh Balidani Jatha in order to give protection to Kar Sewaks who would come for Kar Sewa on that day which had been reiterated in various newspapers. It was again mentioned that Sh. Vinay Katiyar had stated in his press conference reported in Swatantra Bharat dated February 2, 1991, that fundamentalist Muslims of this country should keep in mind that they had to live with

85 per cent of Hindu population and they should not be misled by S|Sh. Rajiv Gandhi, Chander Shekhar, V.P. Singh and Mulayam Singh Yadav and they should prove themselves as sugar being mixed with milk and not as a lemon as sugar makes the milk sweet whereas the lemon makes it not only sour but it also had to be first cut and squeezed. Copy of the said press statement is attached as Annexure XXVI. It was further alleged that BD had come out with a pamphlet captioned "Jis Hindu Ka Khoon No Khole, Khoon Nahin Pani Hai", copy of the same being Annexure XXVII and it is mentioned that a case had been registered in respect of that pamphlet vide FIR No. 1437 of 1990 under Section 153A of the Indian Penal Code at Police Station Haldwani, District Nainital on September 30, 1992 and copy of the said FIR is attached as Annexure XXVIII.

Then reference is made to Sadhvi Rithambra, who is alleged to be permanent invitee by all the wings of RSS and had been sharing the platform with leaders of RSS, VHP and BD in several parts of the country and had been making speeches from such platforms at various places at Nagpur, Patna, Lucknow, Bangalore, Hapur and Delhi and had been exhorting Hindus to unite for the construction of Ram Temple at Ayodhya and had been calling upon the people to join BD and had been openly mentioning that there would be bloodshed. It is mentioned that her speeches had been reported in various newspapers and also are available in audio and video cassettes and in one of her statements she mentioned that in case Abdullah Bukhari alongwith 12 crore Muslims would come on the streets, then 70 crore Hindus were not eunuchs and that every Muslim shall be cut to pieces and it would be difficult to count those pieces. It was alleged that she had been using much more derogatory language in respect of Muslim community.

Sh. Vinay Katiyar is also alleged to have made a speech published in Swatantra Bharat dated November 27, 1991, under the caption "Ram Janam Bhoomi Rajneeti Ki Mandi Mein Neelam Nahin Hogi" and in another newspaper Daily Agni Path dated November 26, 1992, Sadhvi Rithambra is stated to have given a call to the public to come forward to participate in Kar Sewa on December 6, 1992, at Ayodhya and she had stated that Ram Mandir would be built and that as Ravana did not return Sita without a fight, this problem also could not be solved without a fight and the construction of temple would be made at the same site where Ram was born.

It was alleged that during the year 1989, 1990 and 1992 the communal situation remained within the manageable limits except the periods which witnessed major mobilisation programmes by RSS, VHP and BD i.e. September to November 1989, September to December 1990 and December 1992 when large scale mobilisation of Kar Sewa at Ayodhya resulted in all round communal tension, incidents and riots which were depicted in a graph annexed as Annexure XXIX. It was mentioned that there were three peaks in the graph which represented various stages of publicly announced Kar Sewa programmes in the last four years. It was alleged that December 1992 riots were unprecedented in the history of the post-partition India. It was mentioned that from time to time various cases had been registered against members of RSS, VHP and BD on account of their inflammatory speeches and activities. A reference was also made to the speeches of Sh. Vinay Katiyar wherein he had allegedly stated that if any pro-muslim leader opposes the construction of Ram Temple he would meet the same fate as Ravana.

It was averred that the Central Government in cooperation with the State Governments had been trying to check the anti-social elements and unlawful activities of the members of the aforesaid associations and a number of complaints were field before the public authorities. However, despite this, the activities of the said associations did not come down and on the other hand, they were on the increase since 1989 and such activties had put an unbearable burden on the law enforcing machinery and the States where BJP Governments were in power, who had sympathetic attitude towards the said associations, were not willing to cooperate with the Central Government on many critical issues concerning communal harmony.

It was mentioned that the BJP ruled State of UP did not accept the Central Government's recommendations on security measures for the disputed structure. It was averred that taking into consideration that a consensual approach should be the hallmark of democracy, imposition of any restrictions or declaring certain organisations as unlawufl was avoided earlier, however, the demolition of the disputed structure with the participation of VHP, RSS and BD resulted in the worst communal riots in this country since partition. It was alleged that in 1989 an attempt was made to confine Shilanyas activities to legally permissible limits and in 1992 Smt. Vijay Raje Scindia and Swami Chinmayanand alongwith State Government of UP had given an assurance to the Supreme Court that the court's orders would be complied with but their actions did not match with their assurance and the activities of the aforesaid three associations progressively attained a very strong communal bias and Ram Janam Bhoomi-Babri Masjid movement spearheaded by them resulted in the further erosion of communal harmony.

It was mentioned that speeches delivered by the said leaders of the three associations were highly inflammatory and so were the speeches delivered in Ayodhya on December 6, 1992 and in the surcharged atmosphere following such speeches the followers of said organizations indulged in vandalism directly resulting in the demolition of the disputed structure which had immediate fall out resulted in occurrence of communal riots in more than 150 places all over the country and a question took appeared on the secular credentials of our nation and the country was brought to the brink of disaster. It was pleaded that the action for declaring these three organisations as unlawful associations under the act was one of the series of remedial measures taken by the Government and in view of the alarming situation created by wide spread riots in many parts of the country and with a view to bring the same under control in the shortest possibe time, it was found necessary to stop the activities of these associations forthwith and for this purpose the said notifications were issued

under Section 3 of the Act and taking resort to proviso to subsection (3), the immediate effect was given. It was pleaded that this action of the Government had immediate impact on the situation in the country and riots came under control with effect from December 11, 1992. The Central Government reserved its right to place such other facts and material, as may be considered necessary, during the course of the proceedings before this Tribunal

REPLY OF R.S.S.

R.S.S. in its reply, has raised objections regarding admissibility of the resume field by the Central Government. It has pleaded that notification issued under Section 3 of the Act alone would constitute the subject matter of the reference to be adjudicated upon by the Tribunal and the provisions of the Act do not contemplate filing of any resume before the Tribunal by the Central Government and thus, the resume cannot form the subject matter of the reference. It is pleaded by R.S.S. that Central Government has to support the averments made in the notification by evidence, may be oral or documentary, in relation to the grounds set out in the notifications and if no such grounds or particulars are mentioned in the notification, the question of leading any evidence or placing any material in support of such grounds and facts would not arise. It is pleaded further by the R.S.S. that notification issued under Section 3 in respect of R.S.S. does not contain any grounds or any particulars or any facts and it only reproduced the language of Section 153-A and thus, there is nothing contained in the notification which could be subject matter of adjudication by the Tribunal. It is pleaded that the information, the grounds, the particulars and the facts were mandatory to be mentioned in the notification itself which has not been done and thus, this Tribunal could not go beyond the contents of the notification and adjudicate upon the grounds mentioned in the resume. It is further pleaded by R.S.S. that a power to declare an association as unlawful could be exercised only in the manner and strictly according to the procedure laid down by the Act and the requirement to state the facts, grounds and particulars in the notification is a safeguard of the fundamental freedoms granted under Article 19(1)(a) and (c) of the Constitution of India.

It has further been averred that as the resume has not been signed and verified by anyone and the documents annexed with the resume having been not authenticated, the same cannot be at all looked into. It has been pleaded that in fact there was no material before the appropriate authority which took the decision for declaring the R.S.S. as unlawful association and thus, the notification under reference is non-est It is also pleaded that Sh. T. N. Srivastava, under whose signatures the aforesaid notification had been issued, was not authorised to issue such notification on behalf of the Central Government.

It has been further pleaded that allegations in the notification that members of R.S.S. had participated in the demolition of the disputed structure is not covered by the definition of unlawful activity under the Act in as much as these allegations do not make out a case under Section 153-A or Section 153-B of the Indian Penal Code. It is pleaded that no particulars have been given regarding the said allegation in as much as no names have been given of such persons belonging to R.S.S. who allegedly had participated in the demolition of the said disputed structure. It is averred that in fact no cases had been registered against such persons who allegedly demolished the disputed structure and some false cases which were registered against the leaders of R.S.S. were politically motivated and such leaders were discharged by the judicial authorities with the observation that there was no prima facie case against them.

It is further averred in the reply that there was no material in possession of the Central Government to come to the conclusion that the R.S.S. was responsible for the said demolition of the disputed structure and Central Government had acted on whims in banning R.S.S. with ulterior motives to gain political milcage and to suppress all such persons who were considered rival to the ruling party and who have ideological differences with them. R.S.S. has claimed that it is not an unlawful association and that it is an organisation of patriots and of persons devoted to the cause of integrity of India and it is the Congress Party which accepted two Nation theory and the partition of the country and had agreed to have truncated freedom and this is the party which has divided the country on the regional and linguistic basis and this is a party which has opposed the enactment of Common Civil Code whereas the R.S.S believes in one country and one nation irrespective of caste, creed and language and unity in diversity is the slogan of R.S.S.

Referring to the allegations in the notification that R. S. S. has been making imputations that members of certain religious communities have alien religions and cannot, therefore, be considered nationals of India, it is averred by the R. S. S. that the allegation is totally vague as no particulars have been given in the notification in support of such allegations. It is not shown who are the members of which certain religious community who are treated as alien.

It is averred that the ruling party in the Central Government has exploited the events of December 6, 1992 for banning the R. S. S. which was done under undue pressure exercised on the Central Government It is pleaded by R. S. S. that it is a common fact that the Central Government is a minority Government and for its survival, ruling party has to rely upon the merciful support of other political parties which had successfully coerced the Goverment to compromise on issues and various political parties opposed to B. J. P. had issued statements on December 7, 1992 requiring the Central Government to ban these three organisations as well as the B. J. P. and various such leaders had met the Prime Minister for this purpose and after meeting the Prime Minister, they gave press statements on this point and there was a pressure group in the Congress (I) ruling party which also clamoured for banning these three associations. So it is pleaded by R. S. S. that extraneous pressures brought upon the Central Government had forced the Central Government to issue the impugned notifications and same exhibits lack of bonafide exercise of power by the Central Government.

A preliminary objection is also raised in the reply that the resume has made reference to events which are too remote and are stale and could not be formed the basis of the opinion for imposing the ban on these associations. It is also averred in the reply that apart from filing one copy of the F. I. R., where case has been registered under Section 153-A and 153-B of the Indian Penal Code, there is no material relied upon by the Central Government that at any time any case had been registered against any leaders of the three associations under the said Sections in case they had committed any offence covered by those sections. So it is pleaded that in fact there were no such acts of leaders of the said three associations which could fall within the provisions of Section 153 A and 153-B of the Indian Penal Code.

Coming to the merits, the R. S. S. has pleaded that it is a totally wrong allegation that the said three associations are inter-linked or V. H. P. is the front organisation of R. S. S. and Bajrang Dal is the front organisation of V. H. P. It is pleaded that each organisation is a separate legal entity with its separate Constitution, working and objects and this theory of linkage with the R. S. S. of the other two associations is misconceived and totally irrelevant. It is pleaded that in the impugned notifications, there is no allegations of such linkage between the three associations and such linkage has been pleaded only in the resume which is not permissible in law.

It is also pleaded that R. S. S. had not, at any time, encouraged or aided its followers to promote or attempt to promote, on the ground of religion, disharmony or feeling of ill-will and hatred between different communities and this allegation is only reproduction of the language of Section 2 of the Act and Section 153-A of the Indian Penal Code and does not contain any particulars and facts for making such allegation. Similarly, it is disputed by R. S. S. that it had made any imputations and assertions that members of certain religious communities have alien religion and therefore cannot be considered nationals of India. It is mentioned that allegation is completely vague and lacks any material particulars and facts. The R. S. S. has totally controverted the allegation that its workers (swayamsewaks) had participated in the demolition of the disputed structure on December 6, 1992. Rather it is averred that the leaders of R. S. S., who were present at the site, made all attempts to prevent any damage being caused to the disputed structure and such a report is stated to have appeared in India Today dated December 31, 1992 at page 34 which makes reference to Sh. H. V. Sheshadri, R. S. S. General Secretary, who made appeals to kar sewaks in at least four or five different languages to stop demolition of the disputed structure but no one listened to him as his voice was barely audible over the chants of the crowd and even similar appeals issued by Sh. Advani and Sh. Singhal had no effect and rather the leaders had become the led. It is pleaded that in fact the R. S. S. volunteers in uniforms prevented the emotionally surcharged kar sewaks from going towards the disputed structure which fact has been reported by the newspapers on the following day. It is pleaded that not even a single name has been mentioned who may be swayamsewak who allegedly participated in the demolition of the disputed structure.

It is also pleaded by R. S. S. that the Central Government cannot rely on any material which it thinks that the same was not in public interest to disclose for banning the said associations. The right of the Central Government to place any other fact or material during the proceedings before the Tribunal was also controverted on the ground that rules of natural justice require that any material which is used for imposing the ban should be made available to the said association in order to give opportunity to the said association to rebut such material or evidence. It is further pleaded by R. S. S. that the notification does not contain any material or facts or particulars and thus, the notification itself is illegal, non-est and void ab-initio.

In reply to the facts mentioned in the resume, it is pleaded by R. S. S. that V. H. P. is not the front organisation or R. S. S. and Bajrang Dal is also not the front organisation of V. H. P. and it is denied that these three associations are inter-linked with each other. It is also controverted by the R. S. S. that the publication titled 'Virat Hindu Sammelan' was published by R. S. S. It is pleaded that mere fact that some of the members of R. S. S. are members of the other associations would not mean that such other associations are linked with R. S. S. The R. S. S. is stated to be a separate and distinct organisation having its own Constitution, containing its own aims and objects and its working is stated to be different from other organisations. It is pleaded that similarly, V. H. P. and Bajrang Dal are independent organisations with their own independent Constitutions, office bearers and set-ups. The other associations mentioned in the resume are also stated to be independent of each other and are working smoothly without any fetters and restrictions in their respective fields. It is mentioned that Akhil Bhartiya Kendriya Karyakari Mandal is the highest executive authority of R. S. S. itself and the same is not an independent body. It is also controverted by R. S. S. that the facts and the documents mentioned in the resume in any manner establish any linkage of other organisation with R. S. S. It is pleaded that this theory of linkage has been propounded in the resume for the first time and is an after-though plea and is totally irrelevant and extraneous.

It is further averred that Sh. Bala Saheb Deoras, having high status in the country and being a very respectable person, has been made one of the life trustees in V. H. P. alongwith other life trustees but that would not establish any linkage between the two associations. It is controverted that Sh. Pingley and Sh. Ashok Singhal are members of Akhil Bhartiya Karyakari Mandal of R. S. S. It is not disputed that Sh. Ashok Singhal was a Pracharak of R. S. S. at one point of time. It is pleaded by R. S. S. that there are numerous cases of persons who were pracharaks of R. S. S. at some time in the past but thereafter they have been independently working in other organisations and in other social fields and that also would not establish any linkage between R. S. S. and other organisations. It is also controverted that

Sh. Sunder Singh Bhandari is a member of Akhil Bhartiya Karyakari Mandal who, of course, is Vice President of B. J. P. Ram Janm Bhoomi Nyas is stated to be a separate trust and not connected with R. S. S. It is pleaded in the reply that a swayamsewak of R. S. S. can join any political organisation.

While referring to the status of Late Lala Hans Raj Gupta, it is mentioned in the reply that he expired on July 3, 1985 and to drag his name in the resume to propound the theory of linkage is ridiculous and late Sh. Gupta was stated to be member of 65 organisations in his life time. Further elaborating the role of R. S. S., it is mentioned in the reply that for the last 68 years, crores of people had joined R. S. S. but they are presently working in various walks of life in various fields and mere fact that said persons are working in various organisations would not mean that the said organisations can be clubbed with R. S. S. It is disclosed in the reply that prominent leaders including Mahatma Gandhi, Netaji Subhash Chander Bose, Lok Nayak Jaiprakash Narain, Acharya Vinobha Bhave, Babu Jagjivan Ram and such others had attended various programmes of R. S. S. at different times and that would not go to establish any linkage between the Congress and Socialist parties with R. S. S.

It is disclosed in the reply that Akhil Bhartiya Pratinidhi Sabha of R. S. S. holds its annual meeting in the month of March and Akhil Bhartiya Karyakari Mandal of R. S. S. also holds its annual meeting in the month of July and they have nothing to do with the mobilisation programmes undertaken by V. H. P. and Bajrang Dal. So, it is illogical for the Central Government to make averment that since the said R. S. S. meeting were held every year, the proceed or succeed to the activities undertaken by V. H. P. and Bajrang Dal. It is also controverted in the reply that there exist any Sangh Pariwar or there is any synchronisation of efforts between R. S. S. and other organisations with regard to any programme of mobilisation in the country. It is admitted in the reply that Vishwa Samvaad Kendra (Media Centre) has its office at 69, North Avenue but it is pleaded that it is a trust and it works in its own right to release press statements and allow press conferences to be held at its place and it is the right of the said trust to allow any party to hold its press conferences at its place and that trust works in the field of collection and dissemination of news and views and there is no linkage between the said trust and the R. S. S. It is controverted that mere fact that various organisations hold their press conferences at Media Centre would lead to any inference that there is any commonness among the said organisations or they are inter-linked.

While referring to the allegations made against V. H. P., it is pleaded by R. S. S. that it is for the V. H. P. to reply to such allegations but it is denied that the activities of V. H. P. had at any time resulted in embittering relations between the Hindus and the minority communities.

Coming to the allegations made in para 6 pertaining to various documents, the plea taken by R. S. S. is that these documents were irrelevant for the purpose of adjudication under the Act and as they had not formed part of the notification, so they cannot be looked into. The Annexures to the resume mentioned in sub paragraphs (1) to (8) of para 6 are stated to be not relating to R. S. S. It is pleaded that such material referred therein was not published by the R. S. S. and they have been printed by some persons not connected with the R. S. S. and not even at the instance of R. S. S. It is averred that the opinions expressed in such documents is the opinion of the writer|composer and could not be deemed to be the opinion of the R. S. S.

Referring to the leaflet in para 6(1) and para 6(2), the plea is taken that they were not published by R. S. S. and it has also been pleaded that the contents of the same do not come within the purview of Sections 153-A and 153-B of Indian Penal Code. The booklet mentioned in para 6(3) is also stated to be not published by R. S. S. and Suruchi Prakashan is stated to be an independent trust which carries on the business of printing and publishing books as a commercial activity which has nothing to do with the R. S. S. It is asserted that R. S. S. is not carrying on business or commercial activity in any form whatsoever It is, however, not controverted that Suruchi Prakashan is a tenant at Keshav Kunj and the landlord of the same is Keshav Smarak Samiti. While referring to documents mentioned in paras 6(4), 6(5), 6(6), 6(7) and 6(8), the plea taken is that there are not published by R. S. S. and they are irrelevant and at any rate nothing mentioned in these documents brings them under the provisions of Section 153-A and 153-B of the Indian Penal Code.

While referring to para 6(9) it is asserted in the reply that Sh. H. V. Sheshadri is a Sarkaryawah and head of the R. S. S. is called Sarsanghchalak. It is controverted that Mr. Sheshadri had used any defamatory language in regard to Christian community and its leaders and at any rate such a ground having not been mentioned in the notification is otherwise not relevant and also same being stale matter, it is pleaded that anything mentioned in the said booklet is not covered within the provisions of Sections 153-A and 153-B of the Indian Penal Code.

In regard to para 7 of the resume, it is pleaded by R. S. S. that the publications mentioned in this were not published by R. S. S. and the same are also irrelevant and at any rate the contents of the same do not bring implication of provisions of Section 153-A and 153-B of the Indian Penal Code.

It is then pleaded in the reply that V. H. P. had launched a movement for Shree Ram Temple at Ayodhya at the birth place of Lord Rama and had wanted the existing structure there to be relocated at a distance. It is controverted that the said structure was believed or claimed to be a mosque. It is averred that V. H. P. organised support from masses and enlisted kar sewaks but it is denied in the reply that any leader of R. S. S. used the platform of V. H. P. or Bajrang Dal or made any inflammatory speeches. It is controverted that any passions of Hindus were aroused. Further, it is mentioned in the reply that R. S. S. did create an awareness for the construction of Shree Ram Temple at Ayodhya after relocating the structure which is assumed as Babri Masjid.

It is denied that M|s Ashok Singhal, Acharya Giri Raj Kishore, Sadhvi Ritambhara, Sadanand Ji Kakde and Smt. Vijaya Raje Scindia are leaders or office bearers of R. S. S. It is controverted that even these leaders had made any inflammatory speeches. It is pleaded that construction of Shree Ram Temple at his birth place is a part of the overall programme of national renaissance and the same was not against the Muslim community and even the Kar Sewa was permitted by Hon'ble Supreme Court and the same is a lawful activity and the R. S. S. had whole-heartedly supported the movement and had provided all lawful support to it.

With regard to the speeches of Sh. Ashok Singhal and Acharya Giri Raj Kishore, who are office bearers of V. H. P. it is pleaded in the reply that the speeches made by them were being reported in the newspapers but the full text were not being published and the speeches were being abridged and specific answers with regard to such speeches, if made by those leaders, could be given by V. H. P. It is denied that any contents of the said speeches violated the provisions of Section 153-A and 153-B of the Indian Penal Code. It is controverted that Sh. Ashok Singhal had ever stated that the country would be devided or India would be converted to Pakistan and such a statement published in Navbharat Times was stated to be creation of the correspondent. It is also controverted that Sh. Ashok Singhal had stated that Muslims would be taught the language of force in case they failed to understand the language of reason.

In reply to para 9, it is pleaded that averments made in the same are per se outside the scope of provisions of Sections 153-A and 153-B of Indian Penal Code and it was reiterated that V. H. P. was determined to start the Kar Sewa from December 6, 1992, as permitted by the Hon'ble Supreme Court of India which was neither an offence nor in violation of any order of the Courts. It is further pleaded by the R. S. S. that Sh. Ashok Singhal being not an office bearer of R. S. S., so he was not making any statement on behalf of R. S. S., and the statements attributed to Sh. Ashok Singhal in para 10 are controverted. It is denied that R. S. S. or V. H. P. leaders at any time had stated that they would not abide by the orders of the Court or had asked any person not to follow the orders of the Court. It is further pleaded that even such alleged statements would not come within the purview of Sections 153-A and 153-B of Indian Penal Code.

It is controverted by the R.S.S. that Acharya Giri Raj Kishore had, at any time, stated that if any hindrances were caused in the construction of the Ram Janm Bhoomi Temple, then direct action would be taken in respect of other 3000 religious places. The Annexures mentioned in para 12 have been controverted and it is also pleaded that none of the allegations made in this para come within the purview of Sections 153-A and 153-B of Indian Penal Code

It is denied that Rajmata Vijaya Raje Scindia has made any such speech as alluded to in para 13 and at any rate is mentioned that even if such a statement has been made by her, same would be her personal view which she is entitled to have in exercise of her fundamental right granted by the Constitution. The contents of the Annexures mentioned in this para are controverted. It is denied that any such speech referred therein has been made by Shri Ashok Singhal The contents of Annexure XXIII referred therein are also denied. It is also controverted in the reply that Shri Vishnu Hari Dalmia had made the statement attributed to him in this para 13. Even if it is presumed that he had made a statement, the same does not constitute a ground for declaring any association as unlawful.

It is disclosed in para 13 that to the best information of R.S.S., the structure at Ayodhya was constructed by Mir Baqi, a General of Babar, who constructed the same to mark the victory of Babar in the battle of Panipat on the spot where Ram Mandir was already in existence and it was the right of Hindu community to reconstruct a temple at this site. It is emphasised that anything mentioned in para 13 does not come within the purview of Sections 153-A and 153-B of the Indian Penal Code.

The contents of para 14 of the resume have been totally controverted. It has been pleaded that no particulars have been given for making the allegations incorporated in the said para. It is also controverted that R.S.S. swayamsewaks had participated in the demolition of the disputed structure at Ayodhya on December 6, 1992. It is pleaded that Annexure XXIV does not contain the correct statement issued by Shri Bala Saheb Deoras, the Chief of R S S. It is pleaded that at any rate such allegations contained in said para do not come within the purview of Sections 153-A and 153-B of Indian Penal Code.

It is controverted by R.S.S. that role of R.S.S. has been adversely commented upon in regard to communal riots in any judicial enquiry. The correctness of Annexure XXV is denied. At any rate, it is averred that the speeches attributed to other organisations or the pamphlets issued by them do not constitute a ground for declaring R.S.S. to be unlawful.

Coming to para 16 of the resume, it is pleaded in the reply that Sadhvi Ritambhara has not been an invitee to any wing or any meeting of R.S.S. or she has shared a platform with the R.S.S. It is denied that R S.S. has any wing in any part of the country. It is further pleaded that exhortions by Sadhvi Ritambhara that Hindus should unite for the construction of Ram Temple in Ayodhya, if any, do not constitute a ground for declaring any association to be unlawful under the Act. Further plea taken is that reports of speeches of Sadhvi Ritambhara in various newspapers are not correct. A plea is taken that this is not open to go into the contents of any audio cassettes as they are neither part of the notifications nor on the record of the Tribunal and so the same cannot be gone into.

While referring to para 18, plea taken is that kar sewaks had a right to assemble at Ayodhya and such assembly had not given rise to any communal tension or communal riots. It is denied that any inflammatory speeches were made or any activities were

carried out which would result in any communal tension or communal riots. With regard to para 20, it is submitted by R.S.S. that allegations lack particulars and cannot be subject matter of adjudication. In certain paras, where allegations have not been made against R.S.S., plea taken is that it is for the other associations against whom the allegations have been made to make their submissions but it is asserted that even all those allegations do not come within the purview of Section 153-A and 153-B of Indian Penal Code. Allegation made in para 21 is stated to be false and also not covered by the said Sections.

While referring to para 22, the plea taken is that all allegations contained in paras 1 to 21 cannot be made subject matter of the enquiry under the Act by this Tribunal and all the allegations contained in the said paragraphs, which are not specifically admitted, are denied and all such allegations being not part of the notification could not be looked into or enquired into. It is pleaded that no material or evidence was available with the Government at the time of issuing the impugned notifications to justify a declaration that the answering association was unlawful at the time when the declaration was made. It is pleaded that it is only after issuance of the declarations, published in the official Gazette on December 10, 1992, that the Central Government has taken steps to collect the material contained in the resume.

In the reply from internal pages 51 onwards, the R.S.S. has given its history as to how it came into existence. While referring to the life of Dr. Keshav Baliram Hegdewar, founder of the R.S.S. from particular incidents of his life, he is stated to have come to the conclusion that absence of national consciousness and utter lack of feeling of being the organic limbs of national life in individuals results in mutual hatred and discord, jealousy and internecine quarrels for selfish ends which was eating into the vitals of our nation and the division of Hindu Society into higher and lower caste and the most degrading practice of untouchability were the root cause of our downfall and he founded R.S.S. on Vijaya Dashmi Day in the year 1925 at Nagpur, his home town, for removing these deficiences and for promoting the national consciousness, moral character building and ingraining patriotism in the individuals.

It is mentioned that even before partition of the country, Shakhas of R.S.S. were brought into existence in almost all the parts of the country and Shri M. S. Golwalakar, who earned the name of Guruji, became his successor and during his period the organisation grew tremendously and the R.S.S. did human services extending all support to the refugees from Pakistan on country being partitioned and R.S.S. swayamsewaks were in fore front in October 1947 in thwarting the attack by Pakistan on Kashmir. It is pleaded that Indian National Congress had been entertaining grouse against the R.S.S. as they saw in it a powerful opponent and Congress had been adopting the policy of appeasement which has resulted in the partition of the motherland and creation of Kashmir problem and said forces in the Congress party prevailed upon the Central Government in 1948 to ban the R.S.S. immediately after the assassination of Mahatma Gandhi on January 30, 1948 giving the impression to the public that the organisation was involved in the said assassination.

It is mentioned that due to country-wide satyagrah launched during which more than 60,000 members of R.S.S. were arrested and jailed, the Government removed the ban and Sardar Vallabh Bhai Patel, then Deputy Prime Minister, had written a letter to the Prime Minister on February 27, 1948 conveying that R.S.S. was not at all involved in the assassination of Mahatma Gandhi. The ban was lifted on July 11, 1949 unconditionally.

It is pleaded that after lifting of the ban, the organisation grew from strength to strength and it has rendered important services in all fields such as labour, social, political, educational, etc. and R.S.S. members have been at the beck and call of the nation during national emergencies and national calamities. It is then mentioned that in the year 1975, when Shri Jai Prakash Naram had started a people's movement for cleansing the political and social life as he was deeply disturbed by corruption in public life, he called for Sampurna Kranti' and all opposition parties and R.S.S. extended support to his movement and during those days, election of Smt. Indira Gandhi to the Lok Sabha was set aside but that judgment of the Allahabad High Court was set at naught by amending the Constitution and emergency was declared by the then Government on the false pretext that Shri Jai Prakash Narain had instigated the police and military not to obey the orders of the Government and various leaders including Shri Jai Prakash Narain were arrested and as R.S.S. had extended the support to the said movement of Shri Jai Prakash Narain, the R.S.S. was banned for the second time by the ruling Congress Party but still several lakhs of dedicated workers carried on the struggle against the emergency although top leaders of R.S.S. were arrested. After general elections were held in March 1977 and the Congress Party lost power, the ban on R.S.S. was removed by the incoming Government headed by Shri Morarji Desai.

Referring to the disputed structure, it is pleaded by R.S.S. that it is the belief of large majority of the people of this country that Ayodhya was the capital of the Kings of Solar Dynasty and was also capital of Lord Shree Ram who is held in highest esteem by the nation and a grand temple at the place of his birth stood constructed at Ayodhya and the said temple was destroyed by Mughal emperor Babar in or about 1528 and he got constructed a structure which was regarded by Muslims as mosque which was to celebrate his victory in Panipat War and this structure was built by Mir Baqi, a General of Babar, for insulting the Hindus which is evident from the fact that it was brought about within the religious complex known as Paanch Kosi and this dispute was in existence for more than four centuries and because of such frequent disputes, the muslims had abandoned offering Namaaz at the disputed structure from the year 1936.

It is further mentioned that on December 23, 1949 when Pt. Govind Vallabh Pant was the Chief Minister of U.P., the idols of child Ram (Ram Lala) were installed in the said structure. Although the door of

the structure remained locked but the worship and Bhajans at the said place were going on continuously and Hindus had been pressing for removal of the lock at all times but it is only on February 1, 1986, under the orders of the District Judge, that the said lock was removed from the gate and in January 1987 an action committee called All India Babri Masjid Action Committee came into existence under the leadership of Shri Shahbuddin, the object of which was to get hold of said structure for use by the Muslims and to also have the idols of Ram Lala removed. It is also mentioned that litigation regarding the ownership and possession of the said structure was going on in various courts. Reference is made by the R.S.S. to District Gazetteer of 1905 written by H. R. Nevill, a British I.C.S. Officer who confirmed the existence of Janmsthan Temple in Ayodhya, which attracted the attention of different muslim invaders. It is also recorded in the Gazetteer that ancient temple was destroyed when Babar invaded the country in the year 1528 and Babar's mosque was built at the said site. Reference is made to publication No. 66 of Majlise Tehqiqat Wa Nashrile Islam where reference is made to temple at the birth place of Ram Chanderji being converted into mosque.

Disputing the claim of the fundamentalists that the mosque could not be shifted to any other place it is mentioned that Umar Abu Abdul Aziz ordered demolition of a portion of grand mosque at Demascus because it had been built at a usurped piece of land and Kamal Ataturk, the builder of modern Turkey, restored the Catnedral of Santa Sophia when earlier it had been converted into mosque. It is also pleaded that many mosques had been shifted in Saudi Arabia for replanning the capital of Riyadh and in India also mosques had been demolished and rebuilt and one of such mosque is adjacent to the Mazaar of Baba Tausi near Pragati Maidan.

It is also disclosed in the reply that Janmsthan Bhoomi Mukti Sangharsh Samitis were formed throughout the country for getting the Ram Janmsthan site liberated with the object of constructing Ram Janamsthan Temple on that very site on which the disputed structure stood as R.S.S. extended its support to such movement.

Taking cognizance of the sentiments of the large majority of the people, the then Central Government headed by late Shri Rajiv Gandhi accorded permission for laying the foundations for the construction of the temple and on November 9, 1989, in presence of lakhs of people, the Shilanyas Ceremony was performed in that complex.

It is further disclosed in the reply that all the organisations which were spearheading such movement including V.H.P., an organisation established for the spread of Hindu Philosophy throughout the country, decided to start Kar Sewa for the construction of temple on October 30, 1990 and despite repressive measures taken by the then U.P. Government, lakhs of kar sewaks reached Ayodhya and on October 30, 1990 and November 2, 1990, there was indiscriminate firing on kar sewaks leading to a large number of casulties and in view of this development, further activities were suspended.

In the ensuing General Elections in 1991, B.J.P. Government came into power in U.P. and with a view to facilitate the construction of Ram Janmsthan Temple, the U.P. Government acquired 2.77 acres of land adjacent to the disputed structure but the acquisition was challenged and the Allahabad High Court passed an interim order that Government was at liberty to take possession of the acquired land but no construction should be allowed. Although the matter was sensitive but there was delay in hearing and disposal of the case.

It is further disclosed that the Sants who were spearheading the movement and taking decisions, had decided to start Kar Sewa on July 9, 1992 onwards. The Central Government had made an appeal to stop Kar Sewa and the Prime Minister wanted three months time for solving the problem and on that assurance, Kar Sewa was suspended but three month's period expired and the problem was not solved and the Allahabad High Court also had not given any judgment with regard to the validity of the acquisition. In a Dharam Sansad meeting of the sants, a decision was taken to restart Kar Sewa w.e.f. December 6, 1992 and State Government was required to approach the Central Government for getting the matter decided before that date. In this connection, it is disclosed that many meetings took place with the Prime Minister and Defence Minister and they were requested to allow peaceful Kar Sewa on the undisputed land and they were convinced that the Kar Sewa will be peaceful.

It is mentioned that about 2 to 3 lakh kar sewaks reached Ayodhya on December 6, 1992 and it was decided by the leaders of the movement that only symbolic Kar Sewa would be allowed and decision of the Allahabad High Court, which was likely to be announced, would be awaited till December 11, 1992 but unexpectedly, a section of kar sewaks who became impatient resorted to demolishing the disputed structure in a fit of emotion and anger as they were totally disappointed and frustrated in view of the failure of the Government and the judiciary to settle the dispute. The Government has already appointed a Commission to enquire into the said incidents but report of that commission is still awaited.

The important provisions of the Constitution of R.S.S. have been reproduced in the reply. It is emphasised that according to R.S.S. the word 'Hindu' is a cultural and civilizational concept and not political or religious dogma and the word 'Hindu' as cultural concept will include all including Sikhs, Buddhists, Jains, Muslims, Christians and Parsis and thus the cultural nationality of India, which is Hindu, is all inclusive of persons who are born in India and who have adopted Bharat as their motherland and it is a fact borne by history that Muslims, Christians and Parsis too are Hindus by culture, although as religions they are not. The R.S.S. is stated to treat the Hindu synonymous to inhabitants of Bharat. It is pleaded that political intervention first by the British and later by the Indian Political leadership had started vivisecting the cultural concept of Hindus into district groups not just claiming religious identity but separate cultural identity. The attempted partition of

Bengal before partition led to the division of Muslims from the rest and later Buddhists in 1911, Jains in 1917 and Sikhs in 1925 were recognised as separate communities by them.

Prior to independence, it is believed that judiciary had found that a large section of Indian Muslims had umbilical integration with the Hindus as they were converted from Hindus and particularly Cutchis, Memons, Khojas, Bhoras and the Moplas were found to be governed by not the Mohamedan but the Hindu Law of Succession and likewise in Punjab and Sind, Muslims were governed by Hindu Principles of adoption and in different parts of the country, there had been found cultural and social bondage between the Muslims and the Hindus and British Government, following the policy of divide and rule, had passed different enactments such as Cutchi Memon Act of 1920, Shariat Act of 1937 to overrule the prevalent social integration through the common law of inheritance and adoption between the Muslims and the rest of inhabitants.

So, it is asserted in the reply that R.S.S. emphasising the cultural concept of Hindu or Hindutva has always held that Muslims are part of such culture and are not distinct from Hindus and it is the political definition of Hindus and the minority blocks that has been plotering and vivisecting broader cultural identity R.S.S. considers Hindutva as not exclusive but as inclusive integrating concept. R.S.S. then made reference to the cultural meaning of term 'Hindu' in a judgment of the Supreme Court in various dictionaries and Encyclopaedia Britannica and also to treatise Gitarahaya, B.G. Tilak, Mulla's Principles of Hindu Law and various other books. Thoughts of Aurobindo have also been referred to. The term 'Rashtra' is also sought to be clarified and it was emphasised that the word 'Hindu' not only stands for a Society or a group of people but for certain ideals, certain principles and life values and the high water mark of these Hindu ethos lies in this unique holistic world perception perceiving the entire creation as one single harmonious living entity. It is controverted emphatically that R.S.S. is opposed to Muslims in any manner but reiterates that it is opposed to anybody who tampers with the unity and integrity of India and it opposed the partition of the country and it has been in the vanguard of the movement for liberation of Gao and is opposed to ceding of Kachaa Thivu to Sri Lanka.

It is mentioned in the reply that R.S.S. is a mighty organisation with Shakhas at 27000 places in the country and is a strong arm of the nation providing it the strength, organisation and service and it has always been in the forefront to provide relief and succour to the affected persons at the time of calamities like famines, floods, cyclones, etc. and R.S.S. is carrying on service project in all areas of country including in the far away tribal areas. Reference is also made to the prayer which is offered by the swayamsewaks at the close of their daily meetings and also at all functions of R.S.S. So, it is pleaded by the R.S.S. that the ban on R.S.S. is a vicious attack on all that is good and "sastvik" in the counrty and is an attack on the forces who recognise the real nationalism in India and are striving for a National renaissance.

Rejoinder to the Reply of R.S.S.

In the rejoinder the Central Government has asserted that the Resume contains of short enunciation of facts and circumstances which were taken into account by the Central Government while issuing the notification and at any rate as per the provisions of the Act the Tribunal is not to limit its inquiry to the grounds set out only in the notification and it has to adjudicate as to whether there exist sufficient cause for declaring the association as unlawful and the Central Governments is entitled to lead all relevant oral and documentary evidence for that purpose and the Tribunal has wide powers to call for any evidence to satisfy itself regarding existence or sufficiency of cause It is asserted that the Resume is filled as per law and well settled practice. It is controverted by the Central Government that there is any requirement under Section 3(2) of the Act for giving particulars of the grounds in the notification and it is asserted that the notification is valid and complies with all mandatory legal requirements.

It is furuther pleaded by the Central Government that there were enough facts and material available with the Central Government for formation of the requisite opinion for declaring the RSS as an unlawful association. The Central Government has also asserted that the Resume had been filed alongwith the reference letter and as reference letter has been duly signed by authorised person on behalf of the Central Government, there was no necessity of signing the Resume and the copies of the documents filed alongwith the Resume. It is further pleaded that Sh T.N. Srivastava, a Joint Secretary to the Govt. of India, in the Ministry of Home Affairs, had due authority to sign a notification on behalf of the Central Government. It is reiterated in the rejoinder that there took place unprecedented communal incidents and riots on destruction of the disputed structure and the act of destruction was undertaken by RSS alongwith its front organizations, namely, VHP and BD and their acts are punishable under Section 153A and Section 153B of the Indian Penal Code. It is denied that the persons who were arrested had been discharged by the court confirmed. Copy of the order of the court has been annexed to the rejoinder as Annexure X-I. It is asserted that there was sufficient material before the Government to come to the conclusion that RSS was responsible for causing demolition of the disputed structure alongwith front organizations mentioned above and a bonafide decision had been taken by the Central Government without any ulterior move to gain any political mileage or suppress and rival party or persons who have ideological differences with the ruling party.

The allegations made in the Resume have been again reiterated in the rejoinder and the denials of the RSS in the reply have been controverted. It is asserted that the activities of the banned associations have been particularly directed against Muslims and Christians. It is denied that any extraneous pressures had weighed with the mind of the Central Government in issuing the said notifications.

It has been further asserted in the rejoinder that the newspapers, leaflets, pamphlets and speeches are important source of information for a vast majority of population and the various speeches given by the members of the said associations were being reported by the newspapers though with some restraint but the same were causing increase in the communal tension and some of the members of the said associations had master minded the destruction of the structure at Ayodhya and speeches of the members of the said associations have been causing adverse effect upon the communal harmony in the country and over a period of time surcharged communal situation and the relationship between the communities embittered and if such a campaign is persisted with, the effects would be disastrous for the society and the intelligence reports which are available with the Central Government also indicated the deteriorating communal situation on account of activities of the said associations and the Central Government thought best to refer to external sources of information which could be duly supported by intelligence reports and the open disclosure of intelligence reports was not considered to be in public interest. The Central Government has emphasized that it was initially reluctant to exercise its power under the Act but the incident of Ayodhya which was master-minded by the said associations and its aftermath which led to grave destruction of life and property left the Government with no choice but to resort to the provisions of the Act for banning the said associations.

It is further mentioned in the rejoinder that events of the past have been mentioned to show that the activities of the associations were attaining stronger and stronger communal bias with the passage of time and Government being conscious of the importance of civil liberties wanted to avoid exercise of power under the Act and, therefore, did not exercise it till it was faced with the consequences of the demolition of the disputed structure in Ayodhya which led to widespread communal riots throughout the country. It is further asserted by the Central Government that if the members of the associations indulge in unlawful activities which come within purview of Section 2 of the Act it is not necessary that they must be also prosecuted for the offences punishable under Section 153A and 153B of the Indian Penal Code which is not an essential requirement for declaring any association as unlawful. It is further reiterated by the Central Government that VHP and BD are the front organizations of RSS and they are closely interlinked and the constitution, working and the objectives of the three organizations are closely synchronized with each other and they have acted in consort which has led to the present communal disharmony in the country.

The Central Government has further controverted the pleas raised in the reply that the activities of the said associations ha · not resulted in spreading communal disharmony, hatered and illwill between members of different communities. It is reiterated that members of the said three associations had participated in demolition of the disputed structure and the appeals which had been allegedly made by some leaders of the associations for not demolishing the structure at the spot would not absolve them from the responsibility as they did not take any help from the local administration for stopping the demolition. It is emphasized that the Kar Sewa was organised by RSS and the other two organizations and as far as the identity of the disputed structure is concerned, the matter has been referred to Hon'ble Supreme Court by a reference under Article 143 of the Constitution and thus, the Central Government would not like to give any comments on the assertion of the RSS that there existed a Hindu temple and the same was demolished and the disputed structure in shape of Babri mosque was constructed. The Central Government has alongwith rejoinder filed copies of the extracts from the Virat Hindu Sammelan Souvenir as Annexure X-II.

While conceding that mere fact that some members of any two or three associations are common, would not ordinarily establish the linkage amongst the associations, however, where they have a common pursuit and are going in consort with each other and synchronized their programmes, there is every reason to perceive the linkage between them. The Central Government has also disclosed that Sh. Ashok Singhal had attended the meetings of the executive bodies of RSS on different dates which shows that in the period 1989 to 1992 he attended most of the meetings which establishes the linkage between the said associations.

It is controverted that the theory of interlinkage between the said associations is an afterthought. It has been reiterated by the Central Government that all important mobilisation programmes of Dharam Sansad of VHP, Rath Yatra of Sh. L.K. Advani and programme of Kar Sewa in Ayodhya have always been preceded by a meeting of ABKM|ABPS of RSS which were attended by Sh. Ashok Singhal. It is reiterated that RSS, VHP and BD are called "Sangh Pariwar" and such term has been used in "Organizer" an English Weekly which has been noted for consistent writing in favour of RSS. It is reiterated that the Media Centre has been publishing only the handouts of the Sangh Pariwar organizations. It is reiterated by the Central Government that the documents relied upon in the Resume have been published by these organizations and that Suruchi Prakashan has been constituted by the members of RSS and it functions from a building from where the RSS used to function and it publishes the literature adhering to the Sangh Pariwar philosophy and the book entitled 'Hum Mandir Vahin Banayange" which is reflective of VHP's approach to the Ram Janam Bhoomi-Babri Masjid issue is published by the Suruchi Prakashan and contains material published by VHP. It also publishes the proceedings of the ABPS March 1987 and ABKM July 1989.

The pamphlets under the title "Chetavani" and "Aatankwad Hinsa va Garibi" are stated to be published by BHP and the address of VHP is also indicated in those pamphlets. It is further asserted in the rejoinder that although contents of these pamphlets and books and speeches came within the purview of Section 153A and section 153B of the Indian Penal Code, still the Government felt reluctant to initiate proceeding for proscribing them keeping in view the importance of basic civil liberties in a democratic set up but with the communal incidents taking on a

large scale due to impact of these activities the Government was forced to take the present steps for declaring these associations as unlawful. The Central Government reiterated that all the speeches and press releases and the news items relied upon by the Central Government are issued by the respective persons and leaders of these associations and they all come within the purview of provisions of Section 153A and Section 153B of the Indian Penal Code.

The Central Government admitted that on some occasions the Media deleted the more inflammatory parts of the speeches of such leaders of these associations in the interest of communal peace. It is reiterated by the Central Government that the programmes of the said associations pertaining to the Ram Janam Bhoomi movement from the year 1989 onwards have led to number of communal incidents reaching a peak in October 1989 to coincide with the Shilanyas programme and in 1990 from September 1990 to January 1991 as a result of Kar Sewa programme and the Rath Yatra of Sh. Advani and in 1991 and 1992 due to Kar Sewa programmes and resultant demolition of the disputed structure. The Central Government has mentioned that the Central Gov. has declared the associations as unlawful on account of their activities which had caused or had tendencies to cause communal disharmony on the basis of religion, illwill and hatred amongst the different communities and the information furnished in the reply about the view of the RSS on various subjects is of no relevance with regard to the subject of adjudication before this Tribunal.

Reply of VHP

As far as the VHP is concerned it filed at first a brief reply running into about 24 pages and thereafter it filed a detailed reply running into about 115 pages. In the brief reply a plea has been taken that the Act is ultra vires of the Constitution of India and it is violative of Article 14, 19(1) (a) & (c), 21 & 25 of the Constitution of India and is liable to be struck down and as such the constitution of this Tribunal under the Act is void and thus, the VHP cannot be declared to be unlawful association. A plea has been raised that the notification is vague and lacks material particulars and the Central Government has no power to file any resume alongwith any documents and the Tribunal cannot adjudicate upon the acts given out in the Resume which have not been incorporated in the notification.

It is pleaded that the VHP is engaged in the pursuit of its aims and objects as given in its constitution which includes the integration and unity of diverse sects, castes and creeds of Hindu society and is making effort for renaissance of Hindustan and revival of our ancient cultural heritage, philosophy spiritual values and social, religious and moral ethos and these activities are all lawful and do not fall within the purview of Section 153A and 153B of the Indian Penal Code. The allegations made in the notification imputing any unlawful activities to the leaders of the VHP are stated to be false, fabricated baseless, concocted, cooked up and made up and are stated to have been actuated by malice and political greed to create vote bank by winning over the sympathies of muslim community by imposing a ban on VHP. The facts mentioned in the notification regarding the statement of Sh. Vishnu Hari Dalmia have been controverted pleading that even no particulars have been given as to where such a statement was made, whether it was public meeting or a press conference or in any meeting with the Government. The allegation made in the notification that Sh. Singhal in any speech in public meeting in Bilaspur on November 14, 1992, had made any such statement that Muslims would be taught the language of force in case they failed to understand the language of reason, has been denied and it is alleged that the same is malicious distortion of his speech and it is mentioned that in a public meeting on November 14, 1992, he had stated that in case the Government did not want to understand the language of reasoning and act according to the reason, the Hindus who are in substantial majority in this country will have to make the Government understand by the language of compulsion and he never stated that any violent force would be used for such purpose and the said speech was not directed against muslim community and the newspaper report regaridng the same is not a true and correct version of his speech.

It is peaded that the allegations imputing that Smt. Vijaya Raje Scindia had stated in any press conference on November 23, 1992, at Patna that Kar Sewa would be carried out with full determination defying all restrictions, if required, including the court orders is also concoction and she also never stated that Babri Majsid would have to be demolished in order to construct the Ram Temple. It is mentioned that she has stated in that press conference that the construction of Ram Temple was a matter of religious faith beyond the judicial purview and contents of Annexure XXII accompanying the Resume belies the version given by the Central Government in the notification in this regard. It is asserted that she had rather stated that mosque would have to be re-loeated so that Ram Janam Bhoomi temple could be constructed and many acts of re-location of mosque had been done in past.

With regard to the statement imputed to Acharya Giriraj Kishore in the notification, it is denied that he had made any statement on November 28, 1992, saying that in case legal battle and politics came in the way of temple renovation, direct action in respect of other mosques which were built after demolition of temples could not be ruled out. It is asserted that Acharya Giriraj Kishore, however, has stated that the VHP believed in peaceful means and would use|adopt peaceful means for renovation of the temple but in case the same was not allowed by the Government or mocked or jeered at or ignored, then the possibility of use of force by a section of Hindus who had very strong and uncontrollable feelings could not be ruled out. It is denied by VHP that it had ever encouraged or aided its members to promote or attempted to promote on grounds of religion, disharmony, feelings or enmity, hatred or illwill between different communities. It is also denied that members of the VHP had participated in the demolition of the disputed structure on December 6, 1992.

It is pleaded by the VHP that the Central Government was in constant dialogue with the VHP leaders and leaders of AIBMAC either separately or jointly upto the end of November 1992 and till then it is not the case of the Central Government that VHP was an unlawful association or had indulged in any unlawful activities but suddenly the Central Government after December 6, 1992, had fraudulently declared this association as unlawful. It is mentioned in the reply that VPH was constituted on Janam Ashtami Day on August 29, 1964 and was registered under the Societies Registration Act on October 13, 1966 and some of the eminent persons were the members of the Governing Council, namely, S Sh R. P. Mukherjee, C. B. Aggarwal (retired High Court Judges), Shri Rans Raj Gupta, Dr. Lokesh Chandra (Member of Parliament and a Scholar), Swami Chinmayanand of Chinamaya Mission, Dr. K. M. Munshi (Founder of Bhartiya Vidya Bhavan and Former Central Minister and a Governor), Sant Tukadoji Maharaj, All India President of Bharat Sadhu Samaj, Master Tara Singh (an Akali Leader) Giani Bhupinder Singh (President, Shiromani Akali Dal), Brahmchari Dattamoorti Ji of Masurashram and M. S. Golvalkar (Guruji), RSS Chief and it is denied that VHP had ever indulged in any unlawful activity or committed any acts which could come within the purview of Section 153A or 153A of the Indian Penal Code. It is further pleaded that the allegations subject-matter of the notification which are beyond the period of three years would be time-bearred under Section 468 of the Code of Criminal Procedure for launching prosecution and thus, stale and could not be subject-matter for declaring the association as unlawful under the Act. It is further pleaded that the grounds mentioned in the notification or even in the Resume do not disclose or constitute a sufficient cause for declaring the association as unlawful under the Act. It is further pleaded that the material and relevant facts which ought to have been considered have not been taken into account by the Central Government and those are the multifarious and variety of activities, the policies and programmes undertaken by the VHP and the services rendered by it to the nation. Some of the pleas taken by the VHP are common to the pleas taken by the RSS in challenging the said notification which I am not repeating for the sake of brevity.

One of the pleas raised in the reply is that the Resume is a confused document and is bad for misjoinder of parties and causes of action as there is no separate Resume filed for each of the banned associations. It is reiterated by VHP that it is a separate entity and having a separate constitution, separate aims and objectives and policies, programmes and separate fields of activities and thus cannot be clubbed with RSS or BD. The VHP is stated to have separate offices, separate office bearers and it is not the front organization of RSS and the BD is also not front organization of VHP and these three organizations are not inter-linked with each other. The various activities undertaken by VHP are not the activities of RSS or of BD but there may be some common activities but the same would not make the associations as Sangh Pariwar or inter-linked. It is asserted that the VHP believes only in Hindu Tatva which means integration and solidarity of the Hindu society for safeguarding the national unity and the policy of appeasement of minorities should not have any place in the country as the same had proved detrimental to the national interest.

It is asserted that the Hindu concept of State is secular and theocracy is alien to Hindu ethos and Hindu society.

In the detailed reply while reiterating the pleas taken in the short reply some other different pleas have been taken which I will refer. The pleas which have been already taken by RSS and also find mention in the first reply of VHP would not be again repeated by me. It has been asserted that it is well settled law that when a statutory functionary makes an order based on certain grounds, its validity must be adjudged by the reasons so mentioned and could not be supplemented by fresh reasons in the shape of Resume or affidavit or otherwise. Another plea taken is that stray speeches made by some of the office bearers/leaders of the VHP on some occasions referred in the notification though vehemently denied, cannot warrant or justify for declaring the VHP as an unlawful association. It is pleaded by the VHP that the impugned notification had been issued under the pressure of muslim fundamentalist members of AIBMAC, muslim legislators and some hawks in the Cabinet of the Central Government such as Shri Arjun Singh and some other Congress(I) leaders and other rival political parties, Janta Dal and Leftist Parties and the Government has acted under the pressure and dictates of the abovesaid persons and parties in issuing the notification and had, in fact, abdicated its functions of independently examining the material, if any, for issuing the notification.

After giving its objection to the Resume being at all taken into consideration, the VHP on merits controverts the allegation that the three banned organizations are part of any Sangh Pariwar or interlinked or VHP is the front organization of RSS or BD is the front organization of VHP. It is asserted that all these three organizations are separate in all respects. It is admitted in the reply that some of the office bearers and trustees of the VHP were and happened to be the members of the RSS but it is mentioned that RSS is a kind of university actively engaged and devoted to cultivating and producing numerous philosophers, thinkers, great nationalists, patriots, selfless social workers, who had occupied high and responsible positions in this country and some of them still occupy such positions.

It is mentioned in the reply that VHP programmes are planned and decided by its Governing Council and no particular date or month or time is fixed for holding meetings of VHP and as such there is no corelation as alleged between the RSS meetings and the VHP meetings and programmes. It is asserted that all these associations are separate and independent organizations but there may be close proximity in ideology, outlook and philosophy and programmes of these associations but that would not make them any Sangh Pariwar or inter-linked associations. It is admitted that Vishwa Samvad Kendra has its office at

69, North Avenue, but it is controverted that it is the main centre for dissemination of press releases and statements of the leaders of these three associations. It is asserted that same is a trust separately constituted with its own objectives and it collects information from different organizations and sources and disseminates the same to media in general. The press releases contained in Annexure II are stated to be having no relevance and in any case do not establish any inter-linkage.

It is controverted that the VHP had been using the offices of RSS situated at Keshav Kunj, Jhandewalan Extension or at any other place. It is disclosed that VHP initially had its office at Arya Samaj Road, New Delhi, from where it shifted to Gwalior Potteries Compound, Sarojani Nagar, New Delhi and then it was shifted to B-II, South Extension Part II, New Delhi and presently at Sankat Mochan Ashram in Sector VI, R. K. Puram, New Delhi. It is controverted that speeches, writings and activities of the VHP or of its members and office bearers have intended to embitter the relationship between Hindus and the minority communities and it is controverted that the VHP had ever preached violence in compelling the minority religious groups to conform to the standards of Hinduism.

It is asserted that the President of VHP has been and is the member of National Integration Council, a Government sponsored agency headed by the Prime Minister. VHP has denied that it had issued any document Annexure III which purports to have been issued on the face of it by the Indraprastha VHP. At any rate, it is pleaded that the contents of the same do not constitute any unlawful activity or criminal activity. It is asserted that the contents of the leaflets were directed against Congress Ruling Party and the Government run by it and not against the Muslims or any other minority community. In respect of the leaflets captioned "Hindu Jago Desh Bachao", it is admitted in the reply that it was written and published by Sh. A. Shankar who is a trustee of the VHP but it is denied that it has been issued by VHP or it has been issued at its instance. After referring to the contents of the leaflet it is asserted that it does not constitute any unlawful activity and moreover it was issued more than three years ago, so is a stale matter and could not be taken into consideration for imposing the ban.

It is denied by the VHP that Suruchi Prakashan is an organization of RSS or of VHP. It is denied that the book titled "Hum Mandir Vahin Banayenge" was published by VHP. It is pleaded that even if the book is read in right perspective, which was published at the time of General Elections in November 1989, the same would show that it was not actionable and no action was taken by the Government, although more than three years had elapsed. With regard to pamphlet titled "Chetavani", it is mentioned that it was published by Sh. A Shanker under the banner of VHP but in fact it was not written and published by VHP. In the alternative it is pleaded that the contents of the same do not constitute any unlawful activity and nothing is stated in this pamphlet against Muslims.

Referring to the leaflet captioned "Kya Ho Raha Hai Ayodhya Mein". It is mentioned in the reply that it cannot be said definitely whether it was published by VHP alongwith BD or not. Reply further proceeds that assuming that it had been published by VHP alongwith BD, even then the contents of the same do not constitute any unlawful activity. Referring to pamphlet titled "Aatankwad Hinsa va Garibi" purported to have been written and published by Sh. A. Shanker, the plea taken is that it was not published by VHP and assuming it was so published, even then it does not contain any objectionable or offending material. Referring to the leaflet captioned "Kyon Chahiye Hamein Ram Janam Bhoomi" purported to have been written and published by Sh. P. Shankar, a well-wisher of VHP, the plea taken is that the same was not published by VHP but the contents of the said leaflet are stated to be not objectionable under any provisions of law and the same is also said to be a stale matter. Referring to publication, namely, "Samanvay" November 1989, it is admitted that it is a publication of VHP and is stated to contain articles and writings of great leaders including Mahamana Pt. Madan Mohan Malviya, Sh. Vijay Tawakey Sakri and the plea taken is that it is surprising that the Central Government has taken exceptions to opinions of such eminent persons. It is, however, asserted that nothing mentioned in the said publication comes within the purview of the Act or the Indian Penal Code and it is also mentioned that the said material is also quite stale and could not be used in 1992 for declaring the three associations as unlawful.

Referring to the booklet issued by Sh. H. V. Seshadri, it is pleaded that it does not contain any objectionable material and this book was published in 1985 and is a stale matter otherwise.

It is asserted that Congress(I) Party and its slavery to Pope, a foreign national thereby severely damaging the cardinals of the so-called secularism propagated hypocritically by the Congress and it is the Government which in reality is pseudo-secularist.

With regard to the leaflets and pamphlets Annexures XII to XVII, plea taken is that the contents of the same do not contain any offensive material, rather they contain views on Hindu ethos and appeal to Hindus for an egalitarian society by eradicating and shunning untouchability and contain various activities, follow-up programmes by All India VHP such as Destitute Homes, Medical Care Centres, Training Centres for Backward Classes, Literacy and Adult Education etc. all in the service of the nation.

It is controverted in the reply that in the Ram Janam Bhoomi Movement launched by VHP any inflammatory speeches have been made any time or it has ever stated that the disputed structure would be demolished. Plea is taken that the speeches made by Sh. Ashok Singhal, Sh. Kakre, Acharya Giriraj Kishore, Smt. Vijaya Raje Scindia, Sadhvi Rithambra have not been correctly and faithfully reported in the newspapers and the contents of the speeches mentioned in the Resume imputed to such leaders have been said to be concocted and distorted. It is reiterated in the reply that at no point of time anything has been spoken against Muslims.

Referring to the interview given by Sh. Singhal to Gajarat Samachar dated November 20, 1992, the plea taken is that inferences drawn by the Central Government that the same constitute unlawful activity is wrong or that the said statement of Sh. Singhal was in wilful violaion of the court orders. Referring to the statement of Sh. Singhal appearing in Indian Express dated September 17, 1992, it is denied that he had ever stated that the Muslims should be taught to respect the majority Hindu sentiments, rather he had stated that Muslims should respect the sentiments of Hindus and should not put any obstructions in the renovation of the temple. It is pleaded that VHP was not a party to the court proceedings, so there arose no question of giving any undertaking by VHP to the court. It is reiterated that the religious faith does not come within the judicial purview and cannot become subject-matter of judicial determination in view of Articles 25 and 26 of the Constitution. It is controverted that important office bearers of VHP had propagated that they would not abide by the orders of the court and had asked others not to follow the orders of the court. It is controverted that the members of VHP had cast aspersions on the judiciary at any time. The allegation in this connection is stated to be vague.

Referring to the press release reported in Sambhav dated September 20, 1992, it is mentioned that Sh. Singhal had stated if atrocities were committed against Kar Sewaks they would face them boldly which would have a re-action throughout the country for which Rao Government would alone be responsible. It is controverted that his statement had the effect of arousing emotions of Hindus against the Muslims. Referring to the statement made by Acharya Giriraj Kishore appearing in Dainik Jalte Deep dated November 29, 1992 and published by Media Centre on December 2, 1992, it is pleaded that his statement had not been fully and correctly reported as he never stated that the disputed structure would be demolished Plea taken is that VHP had always appealed to the Government to ensure that the birth place of Lord Ram is restored to Hindus to ensure that a grand Ram temple is renovated/constructed at Ram Janam Bhoomi.

While denying that Smt. Vijaya Raje Scindia is a member of Governing Council of VHP and/or any important office bearer of VHP, it is admitted in the reply that she is life trustee of VHP and a trustee of Ram Janam Bhoomi Nyas. It is denied that she had stated that despite the orders of the court the Kar Sewa would start. The allegations are said to be vague as no particulars have been given. It is admitted that she had stated that the construction of the temple is a matter of religious faith and is outside the judicial purview. Plea taken is that the contents of Annexure XXII belie the allegations imputed to Smt. Scindia.

The speeches imputed to Sh. Ashok Singhal and Sh. Vishnu Hari Dalmia in para 13 of the Resume have been controverted. The statement attributed to Sh. Vinay Katiyar published in Sunday magazine dated December 6, 1992, has been also controverted. In the alternative the plea taken is that the same does not constitute any unlawful activity. The press cuttings Annexure XXVI are stated to have not correctly reported the statements. With regard to the leaflet referred in this para 15, assuming it to be issued by BD, the plea taken is that the contents of the same do not constitute the unlwful activity as it only exhorts Hindus to assert their rights without any fear and the FIR Annexure XXVIII is stated to be a false and fabricated case. It is admitted in the reply that Sadhvi Ritambhra, a Sanyasan, who had renounced the worldly life, was invited by VHP to speak on its platform as she is a prominent social worker, a religious leader and a great orator. It has been admitted that she had spoken from the platforms of VHP and BD but the same does not make her a member or office bearer of VHP. It is pleaded in the reply that her statements as alleged in para 16 have been distorted or misrepresented and the statements made by her are said to be of a Hindu religious leader who strongly feels about the construction of Sri Ram Temple at the Ram Janam Bhoomi, the birth place of Lord Ram at Ayodhya and she speaks against the appeasement of the minorities which is the policy of the Government. It is pleaded that the contents of her speeches do not come under the provision of Section 153A and Section 153B of the Indian Penal Code and no criminal case had been registered against her earlier except the one registered after December 6, 1992. It is controverted that she had ever stated that if Abdullah Bukhari thinks that twelve crore muslims would come on the streets then seventy crore Hindus were not eunuchs and every muslim would be cut to pieces and it would be difficult to count hose pieces. Plea taken is that her statement has been deliberately cooked up, mis-quoted and distorted and what she really stated was to counter the threat that if something happened to the structure 12 crore muslims would come on the streets but they forget that seventy crore Hindus would not lag behind and they would also come on the streets. It is controverted that she used derogatory language vis-a-vis members of muslim community. However, it is asserted that she is critic of Government policies and most unreasonable obstinacy and obstructionist attitude and conduct on the part of the muslims in the peaceful reconstruction of Ram Temple at Ayodhya.

With reference to the plea of the Central Government in para 16 of the Resume that it was in possession of audio and video cassettes in support of its allegations the plea taken is that Government cannot produce the same and no such audio and video cassettes are available with the Central Government.

Referring to the speech of Sh. Vinay Katiyar which appeared in Swatanter Bharat dated November 27, 1991, the plea taken in the reply is that Sh. Vinay Katiyar never abused the Muslims and the allegation is mischievous and the statement and speeches attributed to Sadhvi Rithambra in para 17 though not correctly reported are stated to not constitute any unlawful activity.

Some history of the disputed structure has been given by VHP which has been already referred to by me from the reply of the RSS.

It is controverted that Kar Sewa programmes mobilised by VHP in the years 1989, 1990 and 1992 had resulted in any communal tension or communal riots. The plea taken is that the communal riots have been occurring in this country.

It is further pleaded in the reply that the communal riots have been occurring in this country since many decades and particularly they have taken place in the States ruled by the Congress Goverament. On the other hand, in the States ruled by B.J.P., no communal riots took place during their regime. So, it is controverted that mobilisation programmes of V.H.P. have resulted in any communal riots. The correctness and validity of the graph annexure XXIX has been denied. Certain facts have been mentioned regarding communal riots in order to highlight the plea that the comunal riots which took place during those years were not in any manner connected with the mobilisation programmes of V.H.P.

It is highlighted that during the Shila Pujan and Shilanyas Ceremony, no communal riots took place and it is only during the regime of Sh. Mulayam Singh in the period December 5, 1989 to June 23, 1991 that communal riots took place at 19 places. It is pleaded that the Kar Sewa which took place in between October 30, 1990 and November 2, 1990, was not platable to Sh. Malayam Singh's party and Shri V. P. Singh's party or to the Congress (I) Party. They conspired and forged alliance to politically outmanoeuvre BJP and they made all effor's to prevent the performance of Kar Sewa by use of brute force and the Government of Mulayam Singh ordered indiscriminate firing on the kar sewaks. It is asserted that the said party of Mulayam Singh and leaders of Congress(I) had instigated and aroused the muslims against the Hindus calling upon them to take up the arms against the Hindus and to fight them to the finish and this has resulted in communal riots.

It is mentioned that during the tenure of 14 months i.e. June 24, 1991 to August 15, 1992 and even upto December 6, 1992, no riots took place in U.P. except at one place namely Banaras and at Banaras, the communal riots were engineered by muslims actively assisted by Congress (I) workers who attached a peaceful religious procession which was being taken out by Hindus for emersion of Saraswati idols.

It is highlighted in the reply that during the Kar Sewa of June 1992, eight lakhs kar sewaks came to Ayodhya but no riots took place anywhere. It is asserted in the reply that riots after December 6, 1992 were started by Muslims on a large scale in the country. They attacked innocent Hindus with fire arms, demolished various temples in various parts of the country and in Mewat (District Gurgaon) alone almost all the temples were demolished and similar incidents had taken place in the State of Gujarat and Bombay where Congress (I) has been in power and no action has been taken against the Muslims and no compensation has been awarded to Hindus.

It is emphasised in the reply that whenever communal riots had occurred between Hindus and Muslims, the same have been always initiated and perpetrated by Muslims which are engineered at the behest of Muslim fundamentalists/fanatics and their leaders in conspiracy with Congress ruling party which has been following the policy of appeasement with a view to have the muslim vote bank in it's favour. Referring to allegations in Para 19 of the resume, plea taken is that they pertain to Bajrang Dal and even otherwise the same are vague and lack in material particulars.

While replying to para 20 of the resume, it is pleaded by the V.H.P. that B.J.P. ruled States have been willing to co-operate with the Central Government on any critical issue concerning communal harmony and allegations made in para 20 are vague and false and have been made with pernicious political motive to dismiss the B.J.P. Governments. It is controverted by the V.H.P. that B.J.P. ruled States of U.P. did not accept Centre's recommendations of security measures for the disputed structure.

It is controverted again by the V.H.P. that members of V.H.P., R.S.S. and Bajrang Dal had participated in the demolition of the disputed structure. It is pleaded that on the other hand, the fact is that when a handful of over-zealous kar sewaks forcibly entered the compound of the disputed structure and started damaging the structure, the senior leaders of B.J.P. Sh. L. K. Advani, Dr. Murli Manohar Joshi, V.H.P. leaders Sh. Ashok Singhal, Sh. Vishnu Hari Dalmia and Rajmata Vijaya Raje Scindia and R.S.S. leader Sh. H. V. Sheshadri and Bajrang Dal leader Sh. Vinay Katiyar made fervent appeals to the said kar sewaks to desist from such acts and made efforts to persuade them from causing any damage but they did not listen and even human wall put up by the kar sewaks around the disputed structure for it's protection was broken by the said persons. Even the appeals made by the religious leaders were not adhered to.

The plea taken is that riots after December 6, 1992 took place due to speeches of the Prime Minister and his cabinet colleagues and other senior Congress leaders in describing the disputed structure as mosque and the desruction was called as great national tragedy and their inflammatory and irresponsible speeches and remarks had incited the lumpen and mischievious elements, miscreants and anti-social elements to resort to violence and to attack Hindus and such attacks were made by Bangladeshi Muslims who had infiltrated in India and the riots had identical pattern that attacks were lead by Muslim criminal elements on police personnel and police had to resort to firing and the Congress party resorted to wholesale misuse of electronic media blacking out the responsible leadership represented by B.J.P., V.H.P. and R.S.S. who could speak word of sanity and of maintaining peace and to give a healing touch to the victims.

The plea taken is that a complete one sided dark picture was presented against the leaders of the three banned associations and the ban was imposed on these associations illegally and in an undemocratic fashion and it has been imposed as a pretext or an

excuse to dismiss the democratically elected governments of Madhya Pradesh, Rajasthan and Himachal Pradesh ruled by B.J.P. Reference is also made to protection being given to the people who are our and out to hurt the Hindu sentiments and mock at Hindu community and Hindu religion and as an example, street plays of Habib Tanveer and others are cited which are being allegedly enacted with the aid and encouragement of Congress (I).

It is admitted that at the time of performance of Shilanyas in 1990, Smt. Vijaya Raje Scindia and Swami Chinmayanandji had given an assurance to the Supreme Court that no Court order would be violated and that assurance was pertaining to Kar Sewa to be performed on 2.77 acre of land. It is mentioned that even the Supreme Court had appointed an Observer to overlook the things at Ayodhya and he had not given any report regarding any objectionable activities of these associations. So, it is asserted that V.H.P. and the other two banned associations have no communal bias and they have not indulged in any activity which could, on account of religion, cause any disharmony, hatred, feelings of ill-will between the Hindus and the other minority communities.

The reply of V.H.P. also criticises the secular policy pursued by Congress terming it as pseudo secularism indulged in to pamper the muslims to exploit them as vote banks whereas these banned organisations are said to believe that true secularism is deep rooted in the Hindu character, Hindu psyche and history bears testimony to this fact. It is alleged that the Congress Party always tried to make people conscious of their castes and sub-castes and had always electrocall exploited them in the name of secularism and policy of the Congress Party had brought the country to the brink of disaster and they are the supporters of aggresion which are spread in the body blocks and which is eating away the vitals of the nation.

It is further alleged by V.H.P. that the reports of various commissions enquiring into various riots have always found that it is the muslims who are responsible for the riots at the behest of muslim fanatic leaders and the Congress leaders and no report has even been given holding the members of these associations to be guilty of fomenting any communal riots. V.H.P. has controverted that the Central Government has any right to produce any material in shape of audio cassette and video cassette or any other evidence which do not find mention in the notification.

V.H.P. had then given the background and the reason for its Constitution mentioning that the Hindu population in India had not been allowed to live in peace and efforts have been made in reducing the Hindu population to proselytisation by Muslim and Christian agencies which is a great threat to our national security and integrity and foreign funds are flowing in this country to support the efforts of Muslim organisations to lure the poor and down-trodden Hindus to convert to Islam and in this connection, reference is made to extract of the note of the Minister of Home Affairs under the caption of "Plan of Action" published in 'Muslim India' February 1, 1985, the views of the Tamil Nadu Government under the caption "Lure of Gulf Jobs Behind Conversions" published in 'Muslim India' February 1984 and reply given by Government to unstarred question No. 5060 dated March 25, 1981, Annexure R-1 and the fact being also noted in the report of Mr. Justice Venugopal's Commission which inquired into the riots of Mandaikadu in Kanyakumari District.

In order to thwart all these nefarious activities a huge Hindu conference was organised on Janashtami Day in 1964 in Bombay which was attended by eminent persons and V.H.P. came to be constituted, inter-alia with the object of consolidating and strengthening the Hindu Society and to protect, develop and spread the Hindu values of life, ethical and spiritual, to establish an order of missionaries for the purpose of propagating dynamic Hinduism representing the values of life comprehended by various faiths and denominations including Buddhists, Jains, Sikhs, Lingayats, etc. and to train the missionaries by establishing seminaries or centres for training, to promote literacy, scientific and cultural research, to establish such institutions and Annexures R-3 and R-4 have been attached in support of these averments.

It is further mentioned in the reply that the Central Marg Darshak Mandal and the Board of Trustees and the Governing Council are three tier system of V.H.P. It is mentioned that V.H.P. has 3000 active Hindus in India and 25 Hindus in foreign countries and there are about 1500 whole-time workers and the total membership of V.H.P., runs into several lakhs. Annexure R-5 to R-14 have been filed to show the various projects undertaken by V.H.P. in various social and religious fields including education, dispensaries, hostels for destitute children, vocational training amongst tribals and backward communities of the Hindu Society.

Then reference is made to Code of Conduct formulated by the Dharmacharyas for the entire Hindu Society and efforts made to persuade the entire Hindu society to celebrate all Hindu festivals throughout the country. So, plea taken is that V.H.P. has been wrongly termed as communal and malicious and mischevious canards have been spread against V.H.P. on the part of Congress (I) and its Government. It is mentioned that banning of the V.H.P. aims to putting to a grinding halt the multi-dimensional social activities for the upliftment of the poor, down-trodden, backward, scheduled caste, tribal, illiterate Hindus including destitute widows, orphans, leprosy patients, socially neglected people and a wholesome reform and unity of Hindu Society. The reply then goes on to describe the meaning of Hinduism and the different approaches to the word 'Hindutva' (Hinduhood).

It is mentioned that this term is a compendious name for the indigenous and pristine dynamo of cultural nationalism of the Putraroop Samaj that inherits and possesses a pristine, accomodative, creative and regenerative heritage and culture based on holism, integralism and humanism, and the other approach is to treat Indian as a Nation in making mutually antagonistic, diverse cultures be made to coexist to constitute new nation and minority appeasement is the main theme and ethos of the second approach. To tell the Hindus to be secular is to teach

secularism to the community which imbibes secularism in its way of life since civilization dawned in this Bharatvarsh. The lives and preachings of Lord Ram and Lord Krishna are stated to have throbbed the inner being of the Hindus living in this land for thousands of years moulding them into one cultural entity and Hinduism does not connote religion but mother of a grand family of hundreds of religious sects and sub-sects and a particular denomination changing one's way of worship does not change its culture and does not mean that it ceases to be a Hindu and the word 'Hindu' connotes the nation in Bharat.

Then refernee is made to distortion of history and culture by asserting that Hindus were aliens, that the Aryans migrated from Central Asia to India or the original inhabitants were driven deep into the forests who were named as 'Adivasis' by British and that Lord Ram and Lord Krishan were not historical figures but mere fiction and that Bharat was not an ancient nation and that once a person takes to a particular religious sect, he ceases to be a Hindu and they even in the first census in 1881 described Jains, Sikhs, Muslims and Christians to be different from Hindus. It is alleged in the reply that the policy of Britishers is still being continued by Congress after partition of the country under the pseudo secularism.

It is pleaded that realisation of Hindu identity is a vital factor for integration, social harmony and brotherhood of the entire people living in this vast land of Bharat Varsh. Then some quotations have been given from 'Vayu Purana' and 'Mahabharat'. It is also alleged in the reply that Muslim during the British rule were taught that Bharat is not their motherland and the fanatical muslims have been teaching their muslim brothers the same thing as they have been objecting to the recitation of 'Vande Matram', our National Song and they have also been misguided to not to treat Ram. Krishan, Shankar and Mahavir as their ancestors or forefathers. So, it is emphasised in the reply that unless Muslims in this country realise that Bharat is their motherland and they have originated from Hindu Society, that they are Mohammed Hindus and are like one of the many other religious denominations rooted to the soil and heritage of Bharat happily and peacefully thriving and growing, they can never become part of national mainstream which everyone very much wants and cherishes them to be and this realisation alone can usher in a united, integrated and harmonised Bharat where there will be lasting peace and harmony among all religious groups of this country.

It is also averred that Britishers who have been propogating the ideology that Indian Nation was in making had floated the homeland theory for the Muslims and the Congress succumbed to the appeasement idea by appeasing the Muslims in agreeing to their unjustified demands which has been main cause for distancing them from national mainstream and this has created disharmony, disaffection, ill-will and animosity in the deprived part of the Society.

It has further been emphasised in the reply that whatever disharmony, violence and religious animosity exist in this country, the same is direct result of the policy of appeasement towards the Muslims and Article 370 of the Constitution pertaining to Kashmir is said to have separated the entire population of Kashmir from rest of the Bharat and that more than 3 lack Hindus have been driven out from Kashmir Valley and if the policy of the appeasement was to be continued, there is a danger of second vivisecting of this country. Then it is alleged that Congress Government has allowed infiltration by Bangladeshis Muslims in West Bengal, Bihar and Assam which have swelled to more than one and a half crore which has resulted in uprooting the Hindus from the villages and to save their honour, the Hindus had to sell their land and property in thousands of villages which were once prominently Hindu and now are dominated by Muslims due to the policy of appeasement of the Congress as well as Communist Parties. It is alleged that Bangladeshis have taken habitation deep into India, even in Metropolitan Cities like Bombay and there has been a demand of partition for West Bengal for giving another homeland to Muslims who are on the verge of out-numbering Hindus in a number of Districts. It is further alleged that the Hindu population has decreased in Bangladesh by mass conversions and 25 lakh Hindus, to save their honour and humiliation, had left Bangladesh in the last 10 years and they had set up slums on railway lines from Calcutta to Bongaon, and they are living in inhuman conditions.

Other facts mentioned in the reply pertain to attrocities and vandalism committed by the Muslims. When Bhutto was hanged, it is alleged that Hindus were murdered in large number in Kashmir and 54 temples were destroyed and Hindus were attacked in different parts of the country when Zia-ul-Haq died in a air-crash. Muslims indulged in violence in India against Hindus to exhibit their anger for a book written by Salman Rushdie in United Kingdom and property worth crores of rupees was destroyed because of a story of one Mohammed published in a newspaper which had nothing to do with the Prophet. It is alleged that aggression on the Hindus has become a daily exercise by the Muslims as during the Hindu religious processions, they attack the same and the policy of appeasement of the Congress Government restrains the security forces from taking any steps to curb such attacks and if any officer who acts boldly in this connection he is immediately transferred or suspended and there is even talk of dissolving the P.A.C. to appease the fundamentalist Muslims.

It is alleged that these Muslims, who indulge in riots and arson and killing of Hindus, are encouraged by the policy of appeasement followed by the ruling Congress Party and Muslims collect illegal arms in the places of worship and they use them from time to time in attacking Hindus and Muslims also defy the national anthem or to honour the national flag and whenever a criket match is played between Bharat and Pakistan, the Muslims shamelessly express their cheers at the victory of Pakistan and mourn the defeat of Pakistan by burning and looting of shops and houses.

It is further alleged that the Muslims choose to hurt Hindu susceptibilities by butchering cows and taking pride and happiness and feeling of glory in the

"Might of Islam" and they also oppose Hindi and prefer Urdu and also oppose imposing of Civil Code and the programme of family planning and support Islamic Theocratic States of Muslim countries and insist on pseudo secularism in Hindu India.

Then refernece is made to bringing the law to set aside the judgement of the Supreme Court in Shah Bano's case and latest example is of passing the statute the Places of Worship (Protection) Bill, 1991. Then it is alleged that the Teen Beegha territory has been surrendered to Bangladesh following the same policy of appeasement in spite of stiff opposition by Hindus. So, it is pleaded by the V.H.P. that this policy of appeasement is the main cause of exercising discrimination against the Hindu majority which has resulted in creating disharmony, religious ill-will and animosity between the religious groups. It is also alleged in the reply that the present structure was vertually temple as Puja of Ram Lala was being performed there for the last more than 42 years and it is only misdescription of the same as Mosque when it was demolished that had triggered riots in several parts of the country resulting in destruction of 2000 temples in Pakistan, 3600 in Bangladesh and 22 in United Kingdom.

It is also alleged that the present Government, instead of bringing to book the aggressor Muslims who attacked with bombs and lethal weapons but were somehow killed in the firing by security forces, instead they have been awarded compensation. It is also alleged that the efforts of the leaders of V.H.P. for fostering goodwill between the majority and minority communities have been thwarted and a press release dated December 12, 1989 sent by Sh. Vishnu Hari Dalmia was not given any prominence, copy of which is Annexure R-15 and the copies of the letters sent to Doordarshan, Annexures R-16 and R-17 and the letters addressed to the then Minister, copy R-18 and R-19, but still no action has been taken and such a message was not broadcasted and suggestions given to the Home Minister, copy R-20 and R-21, have been ignored. It is alleged that disinformation campaign has been going on at the behest of the Government to mislead the Muslims in believing that worship at the disputed structure has commenced only from 1986 while the fact was concealed that worship has been going on by Hindus for the last 42 years and that has led to incite the Muslims to create disharmony and hatred against the Hindu. So, it is pleaded in the reply that the notification issued by the Central Government in imposing the ban is totally frivolous, malafide and illegal.

REJOINDER ON BEHALF OF CENTRAL GOVT. TO REPLY OF V.H.P.

In the rejoinder filed by Central Government, while controverting the plea that the Act is violative of any provisions of Constitution, it is asserted that this Tribunal being creature of the Act has no jurisdiction to go into the question of unconstitutionality of the Act. It has controverted the allegation that notification is illegal, malafide or is frivolous or it has been issued under any political pressure or for any political rivalry. It is asserted that notification is based on material facts and is not vague and the resume which contains the facts, evidence and documents is valid and can be looked into by the Tribunal.

All the speeches imputed to various leaders in the notification and in the resume have been again mentioned to have been made by them and any plea taken in the contrary in the reply has been controverted. It is also controverted that speeches have been concocted or distorted in newspaper reports and press releases. It has been reiterated that fiery speeches given by the leaders of V.H.P. and other persons connected with VHP and other activities of the members of VHP come within the purview of Sections 153-A and 153-B of the Indian Penal Code and they are unlawful activities. Plea is taken that the nature and functions of the Tribunal envisaged under Secion 4 of the Act are different from strict judicial review of the administrative action and the two cannot be equated. It is asserted in the rejoinder that the Government was engaged in talks for solving the problem and VHP was selected as one of the major organisation for consultation as it articulated the militant Hindu viewpoint in vehement manner and the Government attempted to contain the militancy of the organisation and were pursuading it to reach an amicable settlement. It is asserted that VHP has not confined itself only to the aims and objects enshrined in its Constitution and on the contrary, activities of VHP had progressively attained a very militant character which has led to communal tension in the country.

The plea of VHP that certain alleged unlawful activities were barred by time and are stale has been controverted in the rejoinder. It is again reiterated in the rejoinder that the three associations which have been banned are inter-linked and mere fact that they have separate legal entities is of no relevance. It is asserted that when these associations work in comfort on issues common to these associations, they are to be treated as inter-linked associations and they have similar objectives for which the Sangh Pariwar works and Annexure XVI has been filed which is a copy of Virat Hindu Sammelan Souvenir in this connection. It is reiterated that Media Centre has been publishing only the hand outs of the Sangh Pariwar organisations and the activities of VHP are directed against the Muslim community in particular and also against other minority religious groups. It has been asserted that the documents mentioned in para 6 of resume have been issued by VHP and they come within the purview of unlawful activities under the Act and it is asserted that the audio and video cassette which also show the speeches of the leaders of VHP and others are admissible in evidence and privilege claimed by the Central Government for not supplying the copies of such audio and video cassettes is justified in public interest.

It has been asserted in the rejoinder that on the basis of experience for nearly eight decades, the law enforcement agencies all over the country have come to categorise an incident as communal incident if it was as a result of clash between two individuals and two groups of people belong to two communities and consequent to the incident, there was generation of communal violence requiring the administration to take preventive action. It is reiterated that communal violence reached their peaks on the major mobilisation

movements taken out by V.H.P. i.e. Shila Pujan, Shilanyas Ceremony, Rath Yatras and Kar Sewas and these activities have resulted in communal tension and communal violence. The Central Government has also controverted the plea taken in the reply that leaders of these associations had appealed to the kar sewaks not to damage the disputed structure and in any case such appeals were eye wash for escaping the liability.

REPLY OF BAJRANG DAL

In the reply, to show cause notice, filed on behalf of BD, some of the pleas which are common in the replies of RSS and VHP need not be reproduced.

It is pleaded by the BD that there is no proof regarding the charge made by the Central Government that BD has been organizing exercises, drills and other similar activities in order that the participants would use criminal force or violence against other religious communities. It is further pleaded that BD is a cultural organization and only yogic exercises which have become part of all educational institutions are imparted. The said allegation in the notification has been termed as false. Plea is taken that the BD has been serving Hindus and has been providing relief and succour to Hindu refugees from Kashmir, Bangla Desh and Punjab and has also rendered services to earthquake victims in Tehrigarwal. Another plea taken by Bajrang Dal is that it has only brought the true facts to the notice of Indian masses including Hindus with regard to the Muslims and Britishers who ruled this country. Reference is made to some words appearing in Quran which according to BD mean that Muslims are directed to kill "Kafirs" and the word "Kafirs" is said to mean non-believers in God and Mohammad as prophet. Then reference is made to Hindu culture as depicted in Ramayana and then to historical facts regarding killing of brothers by Aurangzeb and imprisonment by Aurangzeb of his father Shahjahan. Reference is made to some roads being named after Moghul Rulers like Babar, Humayun, Akbar by the Britishers and the attempt of Akbar to promulgate new religion by the name of Din-e-Ilahi and the murder of Swami Shardhanand by a Muslim and the killing of Pt. Lekh Ram Mahashay Raipal and Hakikat Rai by the Muslims or Muslim Rulers.

Then reference is also made to the killing of Sikh Gurus by Muslim Rulers and proclamation of one Mohd. Ali, one of the Ali Brothers, saying as President of Congress that even a smallest of Muslim was thousand times better than Mahatma Gandhi. Then the plea is taken that Muslim League members who had been responsible for partition of the country are still having their pulls and pressures in this country and the Muslim League has joined Congress Government in Kerala and the Ruling Party always at the Centre seeks support of Muslim League MPs and it is also mentioned that the AIBMAC All India Muslim Youths which are communal parties have not been banned and no cases have been registered against Shahi Imam, Naib Imam who have given a call to the Muslims for observing Republic Day as a black days on January 26, 1993 and other leaders like Shahbuddin, Zayed Habib who had sought intervention of the United Nations have not been also dealt with in accordance with law.

Then the Government's declaring Id holiday only on sighting of the Moon by Imam of Jama Masjid is criticised. It is also emphasized that on Fridays in prayers in mosques hatred is preached by the Muslims against the Hindus openly and the book written by Shri Jagmohan, M.P., under the title "Frozen Turbulance" depicts such nefarious activities being carried out in religious places of Muslims and no action being taken by the Government and reference is also made in the reply regarding the alleged appeasement policy of Government towards Muslims in not even making any efforts to enforce even one Civil Code for all the citizens, the mandate given in the Constitution.

It is also mentioned in the reply that Muslims have not been following family planning programmes and if no efforts are made by the Government in this regard, the growth of population of Muslims remains unchecked and then in another 25 years the Muslims would claim a part of India as another Pakistan and they would turn Hindus into minority and would also turn this country into Muslim State. Reference is made to demand of partition in West Bengal for carving out a Muslim Homeland when Muslim population was on the verge of out-numbering the Hindus in some Districts.

Reference is also made to reversal of Supreme Court judgment in Shah Bano's case by legislation under the pressure of fundamentalist Muslim leaders. History is quoted saying that 96 per cent of Muslims were descendants of Hindus who had been forcibly converted by the Muslim Rulers. Then grievance is made regarding Hindus interests being ignored and even no ban having been imposed regarding the cow-slaughter which was even the wish of Mahatma Gandhi and conversion of Hindus at Meenakshipuram in Tamil Nadu on the basis of funds obtained from the Gulf countries and that due to efforts of Arya Samaj the said persons were reconverted as Hindus and their temples were renovated and even school was started.

Then reference is made to a report of archaeological survey of India in Delhi and its neighbourhood wherein it is mentioned that Muslim Rulers had demolished Hindu temples and constructed mosques and details have been furnished from that book. It is controverted that members of BD had participated in the demolition of the disputed structure. It is asserted that none of the activities of BD and its members fall within the purview of Section 153A of the Indian Penal Code. Plea is taken that whatever BD leaders have been saying, they have been saying against the policy of the Central Government and not against any particular community including Muslim community and they have been saying only true facts. It is asserted by BD that the faith of Hindus regarding the Ram Janam Bhoomi is not within the purview of the courts.

It is reiterated by BD that the Government of India particularly Congress Party for the last 45 years have been giving undue benefits to the Muslims who are in minority while rights of the majority community are being sacrificed only to preserve the Muslims as their vote banks. It is asserted in the reply that the Central Government particularly the Ruling Party has not been upholding the dignity and independence of judi-

ciary inasmuch as many congressmen burnt effigies of Judges all over India in 1975 when the election of late Smt. Indira Gandhi was set aside and many Muslims all over India burnt effigies of Judges pursuant to the decision in Shah Bano's case and no action was taken when 40 temples in Kashmir and other parts of India were demolished following the opening of the gate of the disputed structure and even no action was taken against Karnataka Government of Congress party when it refused to abide by the award of the Tribunal regarding Cauvary River Water Dispute and even the order of the Supreme Court was flouted and no action taken over the shifting of graves pertaining to Shiya Sunni Dispute in Banaras and no action had been taken against Sh. Mulayam Singh Yadav's Government when it disobeyed many directions of the Supreme Court in the year 1990.

In para 14 certain questions are sought to be addressed to the Prime Minister as to why the Muslim League had not been banned and why no action had been taken against Muslims particularly Abdullah Bukhari and Syed Shahbuddin who have been provoking the Muslims against national interest. It is also pleaded that the disputed structure could no be termed as mosque as for many many years no prayers have been offered there by Muslims and rather Puja has been performed continuously at that structure by the Hindus. The destruction of the disputed structure has turned as a blessing in disguise and the plea taken is that now sufficient evidence has come out in excavation/digging to show that there was a Hindu temple prior to construction of the so-called mosque.

In para 19 of the reply, certain incidents have been mentioned in support of the plea that a policy of appeasement of minorities has been followed by the Congress Party all along which are similar to what has been mentioned in the reply of VHP. It is controverted that BD is in any way linked with VHP or RSS and its claim is that BD is an independent association. It is denied that it is a part of any Sangh Pariwar. Coming to documents which stand mentioned in para 6 of the Resume, the plea taken is that documents mentioned in sub-para (1) to (9) do not concern BD while Annexure 7-D is stated to be only inciting the Hindus for the purpose of making them aware of their rights much less to generate an illwill, enmity or hatred towards any other community. It is also pleaded that in fact, this Annexure does not connect the BD with the other two organizations and it only refers to appeasement policy of the Government and it is not directed against Muslims. Plea is taken that none of the Annexures are covered by the provisions of the Act which could enable the Government to declare the association as unlawful.

In para 7 of the reply it is mentioned that leaflets and pamphlets referred therein in the Resume in corresponding para 7 have no effect in building up communal feeling in the society and so the Annexure mentioned in that para is stated to have not created any communal tension or communal illwill. Plea taken is that the leaflet only point out the wrong policies of the Government.

Coming to para 8 of the Resume the plea taken is that speeches have not been correctly quoted and the speeches imputed to the leaders of other associations have nothing to do with BD. Plea is taken that BD has never violated any orders of the Lucknow Bench of Allahabad High Court or of the Supreme Court. It is contended that the leaders of BD had been propagating in any manner that they would not abide by the order of the Court.

With regard to para 11 of the Resume, the plea taken is that Annexure mentioned in that para does not correctly mention the statement made by Sh. Vinay Katiyar and what is imputed as statements is not correct. Plea taken is that formation of Balidani Jatha by BD was to sacrifice lives in peaceful movement in the course of Kar Seva and it was not at all aimed at violence and the remaining part of the statement mentioned as attributed to him are false. At any rate the plea is that the contents of the said Annexure do not come within the purview of unlawful activities. The case registered against Sh. Vinay Katiyar is stated to be false.

Then reference is made that there was a mandate of the electorate which elected Sh. Katiyar as Member of Parliament for taking steps for construction of the Ram Temple at the disputed structure.

Referring to Annexure XXVII, it is mentioned that it would not show that BD is not an independent association or is having link with the other associations like RSS and VHP.

Coming to para 17 of the Resume, the plea taken is that speeches attributed to Sh. Vinay Katiyar dated November 21, 1991, are not correct and even the statement attributed to Sadhvi Rithambra is not correct. It is asserted tha Sadhvi Rithambra is not a member of BD. The correctness of the graph which finds mention in para 18 of the Resume is challenged. Plea taken is that the communal violence which broke out in Delhi was the handi work of Muslim Fundamentalists and handi work of Butchers who used to slaughter the cattle in the Slaughter House in Idgah which has been directed to be closed under the orders of the High Court by the end of this year.

Reference is made to happenings in Afghanistan, Bangladesh and Pakistan where Hindus have been dealt with adversely and many of them had to leave those countries or to live there as slaves at the mercy of Muslims and the retention of Article 370 of the Constitution pertaining to Kashmir is also adversely commented upon in the reply showing that it is also due to appeasement of the Muslims that the said Article is retained.

In Annexure A to the reply, some quotation from the Quran and from the book of Shri Jagmohan have been referred to.

An additional reply was also filed later on by BD wherein some legal objections have been taken which have been already taken by VHP and RSS in their replies. Reference has been made to the objects of BD in para 8 and also it is reiterated therein that the Quran at page 133 shows animus against Hindus. It has been emphasized that there is nothing

in the notification which could enable the Central Government to declare the BD as unlawful association. It is mentioned that BD is an organisation which enhances the cultural aspect of Hindu Sanskriti and believes in betterment of character and physical health of Hindus so that they may be better citizens of this country. Referring to the allegations made in the notification that the members of BD participated in the activities for using criminal force, it is mentioned that the allegations are not only false but lack in all material particulars.

So, all allegations in the notification are said to be false and it is asserted that the Ruling Party at the Centre is responsible for dividing the country's population not only on the basis of religions but also on the basis of caste and language when they have been proclaiming that the national language won't be forced on anyone which is in violation of the mandate of the Constitution and treating Muslims, Sikhs and Christians as separate from Hindu culture and dividing Hindus into Scheduled Castes, Scheduled Tribes and OBCs and selecting candidates on the basis of religion keeping in view the complexion of the constituencies. Then it is mentioned that Hindus have never asked for partition. Hindus stand for Akhand Bharatvarsh and 99% of the personnel joining the army and para military forces and police are Hindus who fight for their country and Hindus are contributing 90% to the taxes and still the Hindus being terms as communalists while Imam Abdullah Bukhari, Syed Shahbuddin and Muslim leaders who speak against the constitution and do not condemn Pakistan's action in abetting militancy in Kashmir, Assam and Punjab and do not speak against infiltration of Muslim population from Bangladesh and do not condemn Muslims who are aggressors and commit riots are never dealt with under the law. It is also highlighted that the present Central Government has not been taking any action against infiltration of Muslims, demolition of temples in Pakistan and Bangladesh and Kashmir and not worried about the Indian territory in occupation of China and some territory in occupation of Pakistan in Kashmir, are the main reasons for the building of tension in this country. It is also asserted that duly constituted democratically elected Governments in the States of Rajasthan, Madhya Pradesh and Himachal Pradesh have been dismissed for political reasons to show favour to the Muslims. So, it is asserted that notification in question is totally malafide and illegal

REJOINDER TO THE REPLIES OF BAJRANG DAL

In the rejoinder the Central Government has controverted the pleas taken by BD and has reiterated its emphasis that there is ample material to show that the three organisations in question are interlinked. It is pleased by the Central Government that behind the facade of social welfare activities the BD in fact, is carrying on the activities of VHP spreading illwill and enmity towards Muslims. The Central Government has pointedly referred to the stand taken by BD in reply from which it is quite clear regarding the real intention of the BD because the contents of the reply make it obvious that BD has communal hatred for Muslims and the so-called historical facts mentioned in the reply exhibit its phobia against Muslims. The plea taken is that the historical facts given in the reply not only are concocted version of the history but are irrelevant to the issues arising in this inquiry. Inter alia, it is also asserted by the Central Government that BD might have its own independent existence with its own set of objectives, still as it was acting in consort with the other two associations, namely, RSS and VHP, so the interlinkage amongst them is obvious. Plea is also taken about the Media Centre which publishes the material only of the Sangh Parivar organisations and it has been noticed not to publicise the events or issues, handouts of any other political party other than BJP or any other social or cultural organization which is not connected with membership of RSS and VHP. The leaflets mentioned in para 6 of the Resume are reiterated to have been issued by the said organizations and are said to contain enough material to bring it within the provisions of Section 153A of the Indian Penal Code. It is also emphasized in the reply that on the one hand the formation of Baldani Jatha by BD is admitted, still surprisingly the statement which is made by Shri Vinay Katiyar and referred to in Resume in this connection has been denied. It is again reiterated that speeches imputed to various leaders in the Resume have been made by them and they all incite feelings of enmity against the Muslims. It is also reiterated that the disputed structure has been demolished by the workers of these three organizations and same has resulted in unprecedented communal violence all over the country. Rejoinder has been also field to the additional reply of BD in which the allegations against the BD and other two organizations have been reiterated and contrary pleas taken in the reply have been controverted.

The following issues were framed :

1. Whether there is sufficient cause for declaring the Rashtriya Swayamsewak Sangh/ Vishwa Hindu Parishad/Bajrang Dal as unlawful association under the Unlawful Activities (Prevention) Act, 1967?

2. Whether the notifications in question issued by the Central Government are valid?

3. Whether Issue No. 2 is not within the scope of adjudication by the Tribunal under the Act?

4. Whether the Resume and annexures documents filed by the Central Govt. alongwith the reference made under Section 4(1) of the Act cannot be looked into and considered by the Tribunal at all?

I have heard the arguments advanced by the learned counsel for the parties and perused the written notes.

Shri R. K. Anand, Senior Counsel representing the Central Government, has in the opening of his arguments addressed this Tribunal with regard to the scope of the inquiry to be held by this Tribunal. He has drawn my attention to Articles 19(1)(a)(b) & (c) of the Constitution which enshrine the fundamental rights of the citizens to freedom of speech and

expression, to assemble peacefully without arms and to form associations or unions. These fundamental rights are not absolute. He has drawn my attention to Article 19(2) which saves the existing law and the right of the State to make any law for imposing reasonable restrictions on the exercise of fundamental right incorporated in clause (a) in the interest of the sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence, particular emphasis has been laid by Shri Anand on the words "public order" and "incitement to an offence". He has then pointed out that under Article 19(3), similarly validity of the existing law and the right of the State to make any other law imposing in the interest of sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of right conferred by clause (c) of the said Article.

The learned counsel has pointed out that in the interest of public order the restrictions can be imposed on the exercise of the aforesaid fundamental rights by the State and Parliament has brought on the statute book the Unlawful Activities (Prevention) Act, 1967, by virtue of the powers conferred by the Constitution mentioned above for imposing restrictions on the exercise of aforesaid fundamental rights in the interest of public order which, inter alia, has the interest of the sovereignty and integrity of India in view.

He has referred to the statement of objects and reasons in this regard which show that on the unanimous recommendations of the Committee on National Integration and Communalism appointed by the National Integration Council, the Constitution (6th Amendment) Act, 1963, was enacted empowering Parliamnt to impose by law reasonable restrictions also in the interest of sovereignty and integrity of India on the aforesaid fundamental rights and the present bill had been brought before the Parliament in pursuance to said Amendment in the Constitution.

He has pointed out that "unlawful association" has been defined in clause 2(g) to mean any association (i) which has for its object any unlawful activity or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity or (ii) which has for its object an activity which is punishable under Section 153A or Section 153B of the Indian Penal Code or which encourages or aids persons to undertake any such activity or of which the members undertake any such activity.

The learned counsel for the Central Government has laid emphasis on sub-clause (ii) and has emphasized that it is not necessary that acts amounting to offences punishable under the said Sections of the Indian Penal Code should be committed before a particular association can be considered unlawful as defined in aforesaid clause (g) of Section 2 of the Act; even if there is merely an object nourished by such an association for committing said offences or if such association encourages or aids persons to undertake any such activity or of which the members undertake any such activity which is punishable under the provisions of Section 153A or Section 153B of the Indian Penal Code even then the said association would be termed as unlawful association coming within the purview of the said definition.

Then he has drawn my attention to Section 153A which has the heading "Promoting enmity between different groups on grounds of religion, race, language etc. and doing acts prejudicial to maintenance of harmony" and the Section makes it very clear that (a) whoever by words, either spoken or written or by signs or by visible representations or otherwise, promotes or attempts to promote on grounds of religion etc. or any other ground whatsoever, disharmony or feelings of enmity hatred or illwill between different religious, racial, language or regional groups or castes or communities or commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquility or (b) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowingly it to be likely that the participants in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence against any such groups mentioned above or for any reasons whatsoever causes or likely to cause fear or alarm or a feeling of insecurity amongst members of such groups shall be punished with imprisonment which may extend to three years or with fine or with both. If such offence is committed in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, the punishment can extend to five years. Section 153B of the Indian Penal Code makes punishable the imputations, assertions prejudicial to national integration. The extent of punishment is same as indicated in Section 153A

The learned counsel has contended vehemently that while holding inquiry this Tribunal is not deciding a lis between Central Government and the said banned organizations but is deciding the larger issue in which the common public interest is involved. The restrictions which have been imposed on the fundamental rights by enacting this Act are in interest of public order and in fact, this Tribunal is to act as Administrator to see whether there is sufficient cause for declaring the said organizations as unlawful associations under the Act in the public interest and is to act as a Judge in order to see whether the restrictions imposed on the three associations by declaring them unlawful have been rightly imposed by the Central Government keeping in view the material available for decision by the Tribunal. So, he has argued that the larger public interest which is common to the citizens of this country is to be safeguarded by this Tribunal and the said public is not apparent party in these proceedings, so in this connection this Tribunal has to act in administrative field.

He has referred to Section 3 of the Act which contemplates that if the Central Govt. is of opinion that any association is or has become an unlawful

association it may declare such association to be unlawful. The learned counsel has explained that formation of the opinion of the Central Government is not only that association should from the very beginning be an unlawful association to declare it as so but if some subsequent objects and activities of association become unlawful even then the Central Government can form an opinion to declare such an association as unlawful. He has urged that the Tribunal would not have the jurisdiction to go into sufficiency of the material which was available to the Central Government for formation of such an opinion indicated above. It is only in case the Tribunal was to come to the conelusion that such an opinion could not be at all formed in face of the material produced before the Tribunal only then the Tribunal could cancel the order of declaration.

Referring to Section 3(2) of the Act, counsel points out that the notification which is to be published in the official gazette has only to specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary and according to proviso nothing in this subsection shall require the Central Govt. to disclose any fact which it considers to be against the public interest to disclose. He has urged that the words "grounds", "particulars" and "facts" have different connotations and meaning. The "grounds" cannot be called particulars and "particulars" cannot be called grounds and the "facts" cannot be called particulars and the grounds or vice versa. The statute only contemplated mentioning of the grounds and such particulars as the Central Govt. may consider necessary to mention in the grounds but still the Central Government has been given power not to disclose any fact in the notification which the Central Govt. considers to be against public interest to disclose. So, he has urged that it was not necessary for the Central Govt. to have mentioned all the facts and the particulars in the notification and Central Govt. was within its rights to give all the facts and detailed particulars in making reference to the Tribunal.

The grounds which are contemplated to be mentioned in the notification are what is indicated in Section 2(g)(i) or (ii) or both. Giving an instance, the learned counsel argued that if a particular speech of a particular leader of such an association contains highly derogatory and inflammatory words which per se come within the purview of penal Section 153A or 153B of the Indiln Penal Code, the Central Govt. in its wisdom would not like to incorporate such portions of per se inflammatory speech in the notification which is to be published in the gazette and which becomes public in which case then such inflammatory words itself would result in the consequences contemplated in Section 153A or 153B of the Indian Penal Code and that is why the Legislature mentioned in the proviso that the Central Govt. would not be required to disclose such facts in the notification. Further elaborating his point with regard to the scope of inquiry the learned counsel pointed out to Section 3(3) which lays down that any such notification shall not have effect until the Tribunal has by an order made under Section 4 confirm the declaration and the same is published in the official gazette but the proviso to that Section entitles the Central Govt. to make effective the declaration from the date of the publication of the notification even before such declaration is submitted to the Tribunal for confirmation.

Then referring to Section 4 he points out that after such notification had been issued under Section 3(3) the Govt. shall within 30 days thereof refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful. He urges that the words in this particular provision are meaningful. They do not say that there should have existed a sufficient cause at the time the Govt. formed its opinion for declaring the particular association as unlawful. The words "there is sufficient cause" in the statute make it clear that the Tribunal while holding the inquiry is to find out whether there exist or does not exist sufficient cause on the basis of the material which may be produced before the Tribunal or which may be called by the Tribunal in its wisdom to adjudicate on this particular point. So, he has urged that it is not only the material which has been placed before the Central Government for formation of opinion, which is relevant but also every material or evidence which is produced before the Tribunal which enables the Tribunal to make the adjudication as contemplated above, which has to be considered.

Then he has drawn my attention to Section 4(3) which contemplates that after considering the cause i.e. reply filed by the affected association in response to the notice issued by the Tribunal, the Tribunal is duty bound to hold an inquiry in the manner specified in Section 9 and after calling such further information as it may consider necessary from the Central Govt. or from any office bearers or members of the association and then it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and maximum period of six months has been given for deciding the matter. The Tribunal is authorised either to confirm the declaration made in the notification or cancel the same and the order of the Tribunal has to be published in the official gazette. The learned counsel has emphasized that the Tribunal is not to hold a regular trial and rather it has to hold only an inquiry and Tribunal is not to restrict itself to material produced before the Tribunal only but the Tribunal is within its power to call for any other information which would mean material and evidence from the Central Government or from the association or its office bearers or members for adjudicating and deciding about the said notification. He has mentioned that the statute has given 30 days to the Central Government under Section 4(1) in which to make the reference and obviously the period is granted to the Central Government to collect material and facts which are relevant on the subject-matter for placing before the Tribunal. So, he has argued that the whole relevant material and evidence produced by the Central Government has to be considered for deciding the matter.

The learned counsel for the Central Government has also urged that even if for the sake of argument it was to be assumed that there was no material before the Government but sufficient material had been

brought before the Tribunal even then the Tribunal can adjudicate and hold that there is sufficient cause for declaring the association as unlawful. He has urged that in case the Legislature wanted the scope of inquiry to be confined to the material which was available with the Central Government at the time it formed the opinion than the Legislature would have used different wordings like that "the Tribunal is to adjudicate only as to whether there existed a sufficient cause" but by using the present tense that "there is sufficient cause" the Legislature made its mind clear that every relevant material produced before the Tribunal is to be seen by the Tribunal and examined by the Tribunal and then to adjudicate whether there is sufficient cause for declaring the association as unlawful. The Tribunal can also call for such further information as it may consider necessary from the Central Government or from the association concerned and its members and office bearers and this would also indicate that inquiry is not confined to only the material which was available to the Central Government at the time it formed the opinion.

He has also urged that the words "sufficient cause" are different from "sufficient material". The gravity has to be seen to determine "sufficient cause" and not the "material". He has mentioned that under Section 5(5) the Tribunal, subject to provisions of Section 9, has power to regulate its own procedure and under Section 9 the Tribunal, subject to the Rules made under the Act, has to follow so far, as may be the procedure laid down under the Code of Civil Procedure for the investigation of claims and the Tribunal's order is made final. He has pointed out that under Section 6 of the Act, the aforesaid notification if confirmed by the Tribunal is to remain in operation only for a period of two years from the date on which the notification becomes effective. The Central Govt. has been given power under Section 6(2), either on its own motion or on the application of any person aggrieved, at any time cancel the notification issued under Section 3 whether or not the Tribunal had confirmed the declaration. He has pointed out that these provisions are preventive in nature and not punitive. It is only for some limited period that particular association is declared unlawful keeping in view its activities and objects as become evident from the material available and as soon as the public peace and tranquility are restored, the Central Govt. can suo moto even cancel such notification. So, the object of the Act is not to impose any permanent restrictions on the exercise of fundamental rights of such associations but as soon as the Government is of the opinion that such associations have transgressed some limits and endanger public order, it becomes highly appropriate for the Govt. to impose restrictions on such associations so that public order is restored and things are not allowed to go out of hand to threaten very integrity of this country.

He has also referred to the Unlawful Activities (Prevention) Rules, 1968 in support of his contention regarding the scope of the inquiry. Referring to Rule 3 he has stated that the Tribunal while holding an inquiry subject to sub-rule (2) is to follow as far as practicable the Rules of evidence laid down in the Indian Evidence Act, 1872. He has emphasized that the strict rules of Indian Evidence Act are not made applicable and under Section 3(2) any books of account or other documents which are produced before the Tribunal and the Govt. claim that the same are of confidential nature, then the Tribunal shall not make such books of account or documents part of the record of the proceedings before it or allow inspection of or grant a copy of the whole of or any extract of such documents to any person other than the party to the proceedings before it. So, it is emphasized that keeping in view the confidential nature of the documents the Central Govt. can always make a prayer to the Tribunal that documents of such confidential nature be not made part of the records of the proceedings and he has urged that the confidential files containing some IB reports which are given by the various officers of IB in a regular manner would be produced before the Tribunal for its perusal and Tribunal would be requested not to make them part of the record of the proceedings before it and Tribunal would be justified in adjudicating on the point whether there is sufficient cause for declaring these associations unlawful on the basis of the contents which may be available in such confidential files containing such IB reports. He has argued that mere perusal of such confidential documents would convince the Tribunal that there is sufficient cause and in that event, the Tribunal need not refer to any other evidence or material produced before it for giving its decision.

Referring to Rule 5, the learned counsel has emphasized that the reference contemplated to be made to the Tribunal under Section 4 is to be accompanied by not only a copy of the notification issued under Section 3 but all the facts on which the grounds specified in the said notification are based and again the Central Govt. has been empowered not to disclose any fact which Govt. considers in the public interest not to disclose. So, he has urged that Resume which has been given alongwith the reference is a valid document under Rule 5 and can be taken into consideration by the Tribunal in adjudicating the matter.

Sh. Anand has then made reference to an order made by A. B. Saharya, J., who was constituted a Tribunal under the said Act in respect of the notification declaring JKLF as an unlawful association. This order is dated February 18, 1992 and published in the gazette dated September 4, 1992. After referring to provisions of the Act and the Rules, it was held that what is to be adjudicated upon is whether or not there is sufficient cause for declaring the association unlawful and the Tribunal shall decide this question on the basis of evidence on record and what is envisaged is an inquiry by summary procedure and the nature and function of the Tribunal is somewhat different from the judicial review of administrative action whereas the scope of judicial review is restricted to find out whether the opinion of the administrative authority is based upon existing relevant and cogent material and sufficiency of material being beyond the scope of judicial review but under Section 4 of the Act, the Tribunal is not concerned with the material that may or may not have been taken into consideration by the Govt. the Tribunal has to autonomously adjudicate whether or not there is sufficient cause for declaring the association unlawful and the "sufficient cause" is different from "sufficient material"

and it was emphasized that sufficient cause has, undoubtedly, to be decided on the basis of satisfactory evidence to prove the relevant facts on the record and it does not mean any cause which the Govt. may deem sufficient to justify the declaration. The Tribunal has to test the sufficient cause and that should mean existence of legal cause of substantial nature directly connected with public interest in the achievement and fulfilment of the object of the Act. It was also laid down in this order that the Tribunal has to judge the cause keeping in view public interest unlike the usual determination of disputes inter se adversary parties.

The Tribunal has to guard against unnecessary transgression of fundamental rights of members of the affected association as also of the person whose personal liberty may be put in jeopardy by the notification and even if affected association chooses not to cooperate, however, the salutary legal safeguard has to be enforced and the inquiry under the statute must be held. Referring to the standard of proof which is required, the Tribunal held that keeping in view the peculiar nature of the activities sought to be prevented in respect of which direct evidence is difficult to get and truly unrealistic to expect, the strict rules of evidence had to be relaxed to fit into the scheme of the provisions made under the Act. So, it was laid down that the Tribunal may act upon relevant and cogent material which tends logically to show whether or not there is sufficient cause for declaring the association unlawful rather than looking for conclusive proof of the grounds furnished in the notification. In such a case the Tribunal has directed the Central Government and the State Government to produce the original records for testing the evidence and genuineness of the documents and those records were produced before the Tribunal which were considered and were not made part of the record of the Tribunal. It was also laid down by the Tribunal that the newspaper reports by themselves on strict application of the rules of evidence may not be taken as proof of their contents, yet it cannot be denied that newspapers do carry contemporaneous reports of day-to-day activities of general public interest and that reporters and editors usually verify contents of the facts before publishing them. It was held that such reports especially where more than one newspapers report the same thing where the occurrence of an event is established by other evidence like FIR and other official investigation records of the police department, then such newspaper reports may well be taken into consideration. The Tribunal has also taken into consideration intelligence reports received at different times by the Government.

In support of the contention that this inquiry is not a lis between Central Govt. and the association but the larger interest of the public is involved and this Tribunal is not to act only in judicial capacity but also to act as to perform the role of Administrator keeping in view the public interest, he has referred to Re : K. (infants). (1962) 3 All E. R. 178, of the Chancery Division, where the question of custody of two infants was involved. At page 180 it was mentioned that the jurisdiction regarding wards of court which is now exercised by the Chancery Division is an ancient jurisdiction deriving from the prerogative of the Crown as parens patriae. It was laid down that it was not based on the rights of parents and its primary concern is not to ensure their rights but to ensure the welfare of the children, but though it is an ancient jurisdiction, it serves a modern need which has perhaps increased rather than diminished. It was further held that, however, strong the rights of parents, those rights are only the counterpart of duties, and it is generally only the very failure of the parents to carry out those duties that occasions any wardship proceedings at all and it was also laid down that in any proceeding before any court, the custody or the upbringing of an infant is in question, the court in deciding that question shall regard the welfare of the infant as the first and paramount consideration. It was also laid down that a ward of court case is not, therefore, an ordinary lis between parties but partakes of an administrative character and the court will, of course, have regard to the rights of parents and to their views on the interests of the infant, and accordingly provision is made for their being parties to wardship proceedings.

In Official Solicitor Vs. K. and Another, (1963) 3 All ER 191, the House of Lords reiterated the same principles at page 210. It was held that where the judge sits as an arbiter between two parties, he need consider only what they put before him but if one or other omits something material and suffers from the omission, he must blame himself and not the judge and where the judge sits purely as an arbiter and relies on the parties for his information, the parties have a correlative right that he should act only on information which they have had the opportunity of testing. It was emphasised that where the Judge is not sitting purely or even primarily as an arbiter but is charged with the paramount duty of protecting the interests of one outside the conflict, a rule that is designed for just arbitrament cannot in all circumstances prevail.

One of the questions which arose for decision in the said case was whether psychiatric report pertaining to the wards should be disclosed to the parents, it was held that ordinary rule of disclosure ought not to be applied to such cases and that it should be permissible for the Judge at his discretion to receive and consider material from any source without disclosing it to the parties in the case. Another question which arose for decision is whether hearsay evidence could be taken note of. It was held that it is agreed that the practice always has been to admit hearsay in such cases. It was emphasized that an inflexible rule against hearsay is quite unsuited to the exercise of a paternal and administrative jurisdiction. A warning was given that liberty to tender hearsay evidence should not be abused.

In support of his contention as to what the words in the opinion of should mean in the present case, he has taken support from Barium Chemicals Ltd. & Anr. Vs Company Law Board & Ors., AIR 1967, SC 295, Section 237 of the Companies Act which also has the same wordings "If in the opinion of the Central Government" at page 325, it was held that there is no doubt that the formation of opinion of the Central Govt. is a purely subjective process and there can also be no doubt that since the Legislature has provided for the opinion of the Govt. and not of

the court, such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. It was held that the authority is required to arrive at such an opinion from circumstances suggesting what is set out in sub-clause (i), (ii) or (iii) of Section 237 and if these circumstances were not to exist, can the government still say that in its opinion they exist or can the Govt. say the same thing where the circumstances relevant to the clause do not exist ? It was held that the expression "circumstances suggesting" means that the circumstances need not be such as would conclusively establish an intent to defraud or a fraudulent or illegal purpose. So, there must, therefore, exist circumstances which in the opinion of the authority suggest what has been set out in aforesaid clauses. If it is shown that the circumstances do not exist or that they are such that it is impossible for anyone to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute.

The words "sufficient cause" according to the Words and Phrases, Permanent Edition 40A, mean "such state of facts as would lead man of ordinary caution or prudence to believe and conscientiously entertain strong suspicion of accused's guilt". The words "sufficient cause" do not require the state to negate all inferences which might excuse or explain the accused's conduct, but if evidence produced will support a reasonable inference that accused committed the offence or aided or abetted another to do so, sufficient cause to order accused to answer is shown.

In support of his contention as to what could be the scope of inquiry when preventive measures, rather than the punitive measures are to be undertaken, the learned counsel for the Central Govt. has sought support from Haradhan Saha Vs State of West Bengal & Ors., AIR 1974 SC 2154, at page 2157 in para 19. The Supreme Court observed that the essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. It was laid down that there is no parallel between a prosecution in a Court of law and a detention order under the Maintenance of Internal Security Act. In one case a person is punished on proof of his guilt and the standard of proof is all beyond reasonable doubt whereas in the preventive detention the man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the aforesaid Act to prevent.

To give an instance as to what sort of speeches or articles in newspapers could come within the purview of Section 153 of the Indian Penal Code, the learned counsel has cited Babu Rao Patel Vs The State (Delhi Admn.), AIR 1980 SC 763. The question posed in the very beginning of the judgment is "Can political thesis or historical truth be so presented as to promote feelings of enmity, hatred or illwill between different religious groups or communities i.e. the question which we are called upon to answer in these two Criminal Appeals". In the monthly magazine titled 'Mother India' the accused had published two articles under the captions 'A tale of two communalisms' and 'Lingering disgrace of history'. The contention was raised that the first article was no more than a political thesis and the second article was no more than a protest based on historical truth against the naming of the roads in Delhi after the names of Moghul emperors.

The Supreme Court while referring to the first article mentioned that it does begin as a sort of political thesis. According to author, the communalism is an instrument of political minorities and his thesis is that militant minorities thrive on communalism, but in the article he referred to Muslims generally as 'a basically violent race' and went on to say that communalism is, therefore, an instrument of a minority with a racial tradition of rape, loot, violence and murder as is found in India with a Muslim population of 12.7% and comparing the Hindu minority of 6.6% in Pakistan, he emphasized that the Hindu minority because of its racial tradition is different and it does not indulge in communal riots. The author further mentioned that three essentials are necessary for violent communalism : (i) the community must be a minority; (ii) the minority must be sizeable; and (iii) the minority must have a tradition of murder and violence, and he opined that these three essentials are present in the Muslim community of India. Then it has referred to attrocities being committed on Hindus in Pakistan and East Bengal who were being either eliminated by periodical killing or converted on a mass scale and that young Hindu males were compelled to undergo vasectomy operations, young and pretty Hindu girls became the victims of Islamic beds of lust and he emphasized that it is not in the nature and religion of Hindus of India to be intolerant and blood-thirsty like the followers of Islam and he declared that the answer to the problem of communalism was to declare India a Hindu State. The Supreme Court held that there cannot be slightest doubt that article is not even thinly veiled as a political thesis, but it is an undisguished attempt to promote feelings of enmity, hatred and illwill between the Hindu and the Muslim communities and it is designed to fan the sparks of illwill and hatred on grounds of community and the reference to the alleged Muslim tradition of rape, loot, violence and murder and the alleged terror struck into the hearts of Hindu minority in a neighbouring country by periodical killings, in the context of his thesis that communalism is the instrument of a militant minority can lead to no other inference.

Referring to the second article the author protested against the naming of Delhi roads mentioning that Moghul emperors were lustful perverts, rapists and murderers. It was argued that the attack was directed against the Moghul Rulers and not against the Muslims of India and the facts regarding the Moghul Rulers being rapists etc. were plain historical truths. The Supreme Court on full reading of the article held that it revealed much more than a protest against naming Delhi roads after Moghul rapists and perverts and at one place it is said "From Mohammed Ibn Qasim, who landed in India in June 712 A.D. with

6000 Muslim cutthroat, to Mahomad Ali Jinnah who cut this ancient cradle of a peace-loving human race into three bleeding bits in August, 1947, we have had 1235 years of bloodstained history in which life has been constantly punctuated by endless raids, rapes, loot, arson and slaughter and in all these years Hindus have given million of men, women and children as hostages to Islam to buy some peace and preserve their own religion and they are still doing so, God alone knows how long this process of playing and appeasing Muslims would go on but it cannot go on for long if the family planning designs of the presen secular government succeed because then pretty soon there would be no Hindus left to pay. It was further mentioned by the author in the article that it is difficult to predict the future of the ancient Hindu race, it has no future at all in Pakistan where a subtle and systematic genocide of the 10 million Hindus there has now been undertaken at State level by enforcing vasectomy operations on Hindu males and tubectomies, on Hindu females, and by raping women and converting young children to Islam. While criticising naming of the various roads in the name of Moghul Rulers, the author alleged that it is only disgrace to Hindus by a crying insult to the brave community of Sikhs and in case Muslims had been insulted in similar manner they would not only have burnt every house on the road named after tyrant but also set fire to the whole damned city as the Muslims know how to guard their traditions. He also expressed the opinion that some of the ancient relics that reminded Hindus of their shame and disgrace made Muslims proud of the foul deeds of their ancestors. He made an appeal that a beginning should be made to wipe out our thousands year old shame' by changing the Muslim names of roads which remind us of the inhuman atrocities committed on ourmen, women and children and if the Moghuls raped, looted, killed and sinued, the author's view appears to be that they did so as 'Muslim sadists'. The author goes so far as to say that today's Muslims are proud of the foul deeds of their ancestors and the Moghuls being considered author as the progenitors of the present day Indian by the Muslim. The Supreme Court held that there is no question that the article is calculated to rouse feeling of enmity, hatred and ill-will between Muslims and Hindus.

The learned counsel has emphasized that in the present case same sort of depiction of the Muslims have been made in the various leaflets and speeches of the banned organizations but the contents of the replies of the VHP and the BD eloquently show the same bent of mind as was depicted by the author in the said two articles subject-matter of the decision before the Supreme Court.

He has referred to two leaflets, one P-7 and the other having a title 'Hindus Say Beta" in this connection. In support of the contention as to what should the standard of proof of proving the ingredients of Section 153A of the Indian Penal Code, he has sought support from Gopal Vinayak Godse Vs Union of India & Ors AIR 1971 Bombay 56. In para 64, the Judges held that while enquiring whether such a charge can be sustainde on the data disclosed in the order of forfeiture, namely, the offending passages read in the context of the book as a whole, it is important to remember that under Section 153A it is not necessary to prove that as a result of the objectionable matter, enmity or hatred was in fact caused between the different classes. It was held that intention to promote enmity or hatred, apart from what appears from the writing itself in not a necessary ingredient of the offence and it is enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred for, a person must be presumed to intend the natural consequences of his act.

Mr. Anand has also referred to T.A. Miller Ltd. Vs. Minister of Housing and Local Government, 1968 (2) All England Law Reports, 633 where Court of appeal dealt with the question or technical rules of evidence being applicable or not to the enquiry being held by a Tribunal acting under statutory authority. Lord Denning who has written the main judgement, has held, while dealing with the question of a letter written by one person which was relied upon by the Inspector in his report but such a letter could be admitted even though the same amounted to hear-say evidence. The contention was raised that the said letter did not contain any statement on oath and no opportunity having been given to test the same by cross-examination, the same could not be taken into consideration. While repelling the said contention, it was held that a Tribunal of this kind is a master of its own procedure provided that the rules of natural justice are applied. Although most of the evidence was on oath, that was no reason whyhearsay should not be admitted where it can fairly be regarded as reliable and the Tribunals are entitled to act on any material which is logically probative even though it is not evidence in a court of law. It was further emphasised that hearsay is clearly admissible before a Tribunal but no doubt in admitting it, the Tribunal must observed the rules of natural justice but it does not mean that it must be tested by cross-examination. It only means that Tribunal must give thother side a fair opportuity to commenting on it and of contradicting it. So, it was argued by Sh. Anand that I.B. reports which have been proved in this case may amount to hearsay evidence, yet keeping its probative value, the same are admissible in evidence even though the I.B. Officers who had made those reports have not been examined and no opportunity given to the opposite party for cross examining such officers.

He has fuurther sought support from State of Haryana Vs. Ratan Singh, A.I.R. 1977 Supreme Court 1512. The Supreme Court, while dealing with the nature of a domestic enquiry, held that it is well-suited that a domestic enquiry the strick and sophisticated rules of evidence under the Indian Evidence Act may not apply and all materials which are logically probative for a prudunt mind are permissible and there is no allergy to hearsay evidence provided it has reasonable nexus and credibility.

Next he has made reference to State of Mysore Vs. Shivabasappa Shivappa Makapur A.I.R. 1963 Supreme Court 375. It was observed in this judgement that Tribunals exercising quasi-judicial functions are not courts prascribed for trial of actions in Courts nor are they bound by strict rules of evidence and

they can unlike Courts obtain all information material for the points under enquiry from all sources and through all channels without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it.

Another judgement referred by learned counsel for the Central Goverument is P.C. Purushothama Vs. S. Perumal, A.I.R. 1972 Supreme Court 608. One of the issues arising in the said case was whether the returned candidate had arranged certain election meetings on certain dates or not. The Supreme Court held that reports made by the police officers, who have been deputed by their superiors to cover the meetings in question, are extremely relevant and in the absence of anything to show that the officials are inimically disposed towards the candidate or his party the reports carry greatest possible weight.

The learned counsel for the Central Government has drawn attention to various paragraphs of the reply filed by Bajrang Dal and has contended that a bare perusal of the same would show that there is sufficient cause for declaring Bajrang Dal as unlawful association. He has particularly referred to the contention at page 4 of the reply dated February 15, 1993 where, while mentioning that Bajrng Dal has brought to the notice of Indian masses, especially to Hindus, the true historic facts of Muslims and Britishers who ruled this counrty and then had referred to the roads being named particularly in the names of Aurangzeb and other Mughal rulers who, according to the reply, were not such noble persons to continue to deserve such honouur even after independence of the country and it is asserted in the reply that the preaching of Quran is one of the causes for the muslim behaviour that it is mentioned in the Quran that Muslims are to kill the kafirs (non-believers in God and Mohammed as Prophet) and that teaching of the Quran makes the Muslims as intolerant and that Muslims have right to have four wives and go on producing children and if this is not checked, in another 25 years, Muslims will claim a part of India as Pakisan and for the last 45 years, Government had not been able to persuad the Muslims to recognise India as their motherland and certain Iyets (Verses) in Quran are covered by the provisions of Section 153 I.P.C. and that even providing milk to the snakes is continuing, which according to Mr. Anand has reference to the Muslims in general.

He has drawn my attention to internal page 34 where it is mentioned that Sh. Vinay Katiyar is a witness to all the leaders of various organisations including V.H.P. advising the kar sewaks to remain peaceful and to come down and not to damage the structure, whereas Sh. Vinay Katiyar, as a witness, stated that he remained at the stage on December 6, 1992 for half an hour and at that time, no damage had been caused to the structure and he had not heard such speeches. He has urged that Sh. Vinay Katiyar has not come out with, true facts while appearing as a witness.

Referring to para 12, Mr. Anand points out that Bajrang Dal although has no connection with the speeches of the other leaders, as is sought to be shown in the evidence, but here it is mentioned by Bajrang Dal that several facts stated in the speeches of the leaders were full of truth nothing but the truth and that is the fundamental right and faith which has to be respected by the Courts and the Tribunal. Referring to para 15, he has argued that although in evidence, formation of Balidani Jatha was not admitted in so many words, yet it is admitted that formation of Balidani Jatha by Bajrang Dal was to sacrifice lives in peaceful movement in the course of Kar Sewa.

At page 39, it is pointed out that Bajrang Dal has admitted about the communal riots taking place but plea taken is that Muslim fundamentalists were responsible for the same including butcher who were aggrieved of order of the High Court directing the closure of abattoir at Idgah. He has also pointed out that in para 20, it is categorically stated by Bajrang Dal that Bajrang Dal wanted the temple to be constructed at the place where disputed structure stood and then it is mentioned at apge 14 in the reply that as the matter was being dragged on unnecessarily, the patience of Hindus (Ram Bhagats) was exhausted and they decided to set the matter right by themselves instead of depending upon the Central Government or the Courts. This has been pointed out by the Central Government counsel in order to show that in evidence of the respondents, a crude attempt was made to show that persons who had demolished the disputed structuure were planted by Communist Party or by Congress which plea has not at all been taken anywhere and rather this admission is made that Hindus (Ram Bhagat) had demolished the disputed structure.

In para 21 of the reply, it is pointed out that Bajrang Dal makes its mind clear that riots had taken place only where the Muslims were in majority and they were the aggressors and vast majority of the muslims have never treated this country as their motherland and thus is the reason how they are acting at the instance of Muslim—countries who are anti-Hindus.

Mr. Anand has referred to portions of the second reply filed by Bajrang Dal and has highlighted the similarities appearing regarding the allegations made against the Muslims of this country generally as had been the subject matter of two articles which came up for consideration before the Supreme Court in the case of Babu Rao Patel Vs. State (supra).

He has also referred to various portions of the reply of R.S.S. to show that the reply is not forthcoming on material facts with regard to number of persons having membership of R.S.S. being on the Governing Board of V.H.P. and Bajrang Dal and although the plea has been taken by R.S.S. that those two associations are independent organisations and have no linkage with R.S.S. yet R.S.S. has, in its reply, gone on to deny the conents of the speeches imputed to the leaders of the said two associations and in some cases, they have tried to justify the contents of some of the speeches of such leaders. It is urged that if R.S.S. had no linkage with the said two organisations, there could arise no occasion for the R.S.S. to have taken such pleas in its reply.

While referring to the contents of the two replies filed by V.H.P., he has urged that there has been also supression of true facts in those replies with regard to most of the R.S.S. members being the trustees of V.H.P.

In order to support the allegations made in the resume that these three associations are interlinked, Sh. Anand has urged that in fact R.S.S. is the parent body which places its stalwarts in all important positions in the bodies created by R.S.S. He has urged that there is enough material produced on record to show that these two associations namely V.H.P. and Bajrang Dal are part of the Sangh Pariwar headed by R.S.S. He pointed to the testimony of Shri Rajinder Singh, RSSW9 who is an important office bearer of R.S.S. where he deposed that he had little knowledge of the working of V.H.P. and Bajrang Dal and whatever knowledge he has, is derived from the news reports and at one point of time he admitted that the reply to show-cause notice in this matter has been prepared on his instructions alone and in the reply R.S.S. has given facts pertaining to V.H.P. and Bajrang Dal and facts are stated to be based on personal knowledge of this witness. He has also referred to various other portions of his statement to point out that he has admitted that the R.S.S. trains the people in the philosophy of Hinduism and in the Shakhas, the feelings of patriotism, discipline and truth are instilled in the members of the R.S.S. and after receiving such training, the members of R.S.S. are free to join different fields of work.

He has urged that the important witnesses of the three associations have come up with the statements that in fact there is no Sangh Pariwar and this nomenclature has been coined by the media to describe the like-minded independent organisations having similar philosophy as of R.S.S and in fact this nomenclature would not show that there is linkage amongst the three organisaions. Sh. Anand has referred to various publications including published by R.S.S. or R.S.S. sympathisers to show that the word 'Sangh Pariwar' has been used in such publications as well and V.H.P. has described as one of the wings of R.S.S.

He has referred to Ex. RSSSW9/3, a booklet titled "Shakha Darshika" published by Gyan Ganga Prakashan, Jaipur. At page 112 and 113 of this booklet, the Sangh Pariwar has been mentioned and its programme in different fields has been referred and it is mentioned that the Sangh had indulged in two type of activities, one at the Central level and the other at the Provincial level and at the Central level, V.H.P. in the religious field, Akhil Bhartiya Vidyarthi Parishad in students field, Bharat Shikshan Mandal in education field, Bhartiya Kisan Sargh in farmers field, Bhartiya Mazdoor Sangh in labour field and Akhil Bhartiya Vanvasi Kalyan Ashram in Vanvasi field and there are, in this way, about 23 such organisations created by the Sangh in different fields at All India level and then reference is made to organisations created at the provincial level which also are quite a few. Sh. Anand has argued that what better evidence could be available than this booklet to show that V.H.P. is part and parcel of R.S.S. or at any rate, there is a complete linkage between R.S.S. and V.H.P. He has vehemently argued that in their zealousness to deny even the facts which could be easily proved, the three organisations have not come with clean hands and have taken false pleas in the replies in this regard.

Shri Anand has also referred to various portions of the book titled as "R.S.S. A Vision in Action" proved on the record by R.S.S. and exhibited as RSSW9/2. At page 256, it is mentioned under the titled 'Nurturing Right Perspective Through Media', it has been observed that even though the essence of Sangh technique lies in its silent, day-to-day character moulding process, the aspect of educating the public on current national developments has not been ignored and thus was born the 'Organiser' weekly from New Delhi on 1947 and then a weekly 'Paanch Janya' and monthly 'Rashtra Dharma' and dailies such as 'Yuga Dharma', 'Tarun Bharat' and 'Swadesh'. Sh. Anand points out that Shri Puri, who is working in the Media Centre in Delhi, is employee of said 'Swadesh' daily. It is also mentioned that almost every province has established a book publication centre manned by the swayamsewaks and then various publications pertaining to R.S.S. have been referred which have been published by such publication centres.

Then he has referred to page 277 of this book where the activities of V.H.P. have been highlighted. It has been mentioned that V.H.P. had decided to pick up the gauntlet and Dharam Sansad of V.H.P. in April 1984 passed a resolution for the liberation of Shree Ram Janm Bhoomi, Shree Krishan Janmasthan and Shree Vishwanath Temple and as a follow up measure, Shree Ram Janm Bhoomi Mukti Yagna Samiti was formed and a youth from Bajrang Dal also came up to awaken the masses. He has also referred to contents of this book appearng at page 315 wherein it has been mentioned that in this scheme of all round national regeneration, there is no place for totalitarian set up. The Sangh does not seek to play the role of a Central Authority controlling and directing the activities of those various fields and the relationship between the two is akin to that of a mother and her children as the children take to various vocations according to their aptitudes and genius but all of them carry the imprint of mother's wholesome training in their conduct and norms of life, so is the case of Sangh and swayamsewaks; the latter take to different spheres according to their likes but all of them try to uphold their basic convictions and standards of character derived from the Sangh and each of the organisations they have built such as VHP, BMS, ABVP, BKS, BJP, Vidya Bharti and others is completely autonomous with its own independent set-up and mode of functioning but all of them together feel themselves as part of a wider family sharing common national goals and aspirations and bound by fraternal ties.

He has also referred to some portions of the booklet titled 'Lakshya Ek, Karya Anek', Ex. RSSW9/14 which again at page 12 and 13 refer to the establishment of various publishing houses and taking out of the publications for propogating the views and philosophy of R.S.S. Such publications

include the Organiser, Paanch Janya and other publications. It is also mentioned therein that Sewa Bharti, V. H P, Vanvasi Kalyan Ashram and other such organisations including B. J. P. had also taken out their weekly, fortnightly and monthly publications and it is mentioned that V. H. P. has taken out 18 such publications in different languages in this country. It is also mentioned in his booklet that the swayamsewaks had established the publication houses in different places i.e. Suruchi Prakashan at New Delhi and Gyan Ganga Prakashan at Jaipur and then names of other publication houses have been given. At page 14, Sh. Anand has pointed out that name of Sh. Baleshwar Aggarwal is mentioned as pioneer of news agency named 'Hindustan Samachar' set up by the syayamasewaks of the Sangh. It is further mentioned that various newspapers and magazines published by the Sangh have spread the philosophy of the Sangh amongst lakhs of people and the publication houses established by the Sangh have created a vast readership On page 74 again reference is made to Sangh Pariwar and V. H. P. is shown to be member of such Sangh Pariwar besides other organisations mentioned therein At page 75, while referring to creation of Sewa Bharti organisation, it is mentioned that in 1978 Sh. Bala Saheb Deoras, Sarsanghchalak, desired the workers for having social thrust in the country and thereafter this organisation was created and Shri Ashok Singhal has been its guilding spirit.

Reference is also made to the booklet titled "Hindus Betrayed", Ex. RSSW9/4 where an article of Professor Rajinder Singh appears under the title 'The Sangh Pariwar isn't Chasing Votes'. It is mentioned in this article that angry kar sewaks had then wanted to register their protest and they wanted to go home with a sense of achievement and in fact the demolition of structure was an expression of pent-up anger and outburst of accumulative anger against wrongs and the kar sewaks had been humiliated by the forces which stood in their way of building the temple.

Shri Anand has then made reference to certain pamphlets and handbills allegedly issued by these three associations the contents of which according to him are self-evidence because they were likely to and had also caused communal tension. He has referred to replies of VHP and BD to show that in fact there is no specific denial that these pamphlets and handbills had not been issued by these three associations. He has pointed out that the responsible office bearers of VHP, namely, Acharya Giriraj Kishore (VHPW-1), Sh. Vishnu Hari Dalmia (VHPW-5) and Sh Ashok Singhal (VHPW-7) had blatantly not come out with the truth inasmuch as they did not admit the fact that those pamphlets and handbills had been issued by the Central Association or they might have been issued by their State Associations.

He has referred to magazine Ex. VHPW1/8 admittedly published by VHP and in the magazine, there is clear admission of issuance of such like pamphlets and handbills which according to the stand taken by VHP had been distributed in crores. He has also referred to the speeches of leaders of VHP and also of Sadhvi Rithambra and Acharya Dharmendra appearing in newspapers and press releases which are in large number in support of his contention that most provocative statements have been made against muslim minority community and they also show that demolition of the disputed structure was a pre-planned and which is also evident from the viedo cassettes and audio cassettes which have been proved in this case and the transcripts of which have been also proved. He has pointed out that there is no evidence led in rebuttal to show that the video cassettes and audio cassettes proved in this case are in any manner tampered with or do not depict any correct facts.

He has also referred to the facts which have come out in evidence that it is VHP who constituted the Marg Darshak Mandal and Dharam Sansad and also Ram Janam Bhoomi Yagya Samiti and he has referred to the statement of Sh. Dau Dayal Khanna (VHPW-2), who admitted that Sh. Ashok Singhal and Sh. Onkar Bhave, both of RSS, were instrumental in forming the Samiti. He has also pointed out to the statement of Sh. Singhal at page 564 that the said Samiti might have taken the decision to constitute Bajrang Dal and even Prof. Rajinder Singh (RSSW-9) had made a statement at page 609 that Sh. Vinay Katiyar might have joined BD at the instance of VHP. He has also referred to the White Paper of BJP which also shows that it is VHP which has constituted the Ram Janam Bhoomi Yagya Samiti. He has referred to various pages of the White Paper of BJP Ex. PW15/R1 to show that there exists Sangh Pariwar constituted of different organizations. He has also referred to an article of Sh. Chandan Mehta, Correspondent of Hindustan Times, appearing in Ex. PW15/R2 and to an article of Ms. Ruchira Ex. PW15/1 and also to the video cassette Ex. PW22/1A in support of his contention that even the RSS workers, wearing half khaki pants, were initially trying to prevent the persons to cross the barricades for coming to the disputed structure but later on had themselves joined the said crowd and participated in demolition of the disputed structure and he referred to various photographs appearing in different magazines to support this contention. He has referred to various portions of the books produced by the respondents to show that they have also resolved to take up other issues with regard to building of temples at Lord Krishna's birth place and Lord Vishwanath's birth place where again it is claimed that ancient Hindu temples were demolished and mosques were built during the muslim rule in this country.

He has urged that RSS and VHP had escalated the Ram Janam Bhoomi movement keeping in view the forthcoming General Elections in 1984 and the same had surcharged the communal atmosphere and the mobilisation programmes undertaken had also resulted in communal riots. He has urged that when the locks of the gate of the disputed structure were got opened under the orders of the court in 1986 again there took place counter reaction amongst the muslims creating communal tension and in 1989 when again General Elections were in the offing, these associations in consort with each other gave a lot of momentum to this movement by arranging Kar Sewa with the resolve to construct the temple at the disputed place and some

agreement was brought about with the intervention of the Central Government where a spot was selected for performing Shilanyas ceremony and leaders of VHP had given in writing the assurance that they shall abide by the court orders and shall not spoil the communal atmosphere and would take out Shila Pujan processions in accordance with the directions of the District authorities and Shilanyas ceremony was performed in 1989 at the undisputed site.

He has pointed out that in between 1984-89 there were no elections and the said associations did not make any elaborate mobilisation programmes. His contention is that this movement had been brought into existence at such a large scale in 1984 and then in 1989 for a political purpose of influencing the Hindu voters to vote for the political wing of RSS i.e. BJP and in between 1989-92 keeping in view the precarious political situation as no party had secured any absolute majority in the Lok Sabha the said parties accelerated their movement by taking out programmes of Kar Sewa. It is urged by Sh. Anand that such mobilisation programmes had spread communal disharmony and by raising the issue of Ram Janam Bhoomi to such high level of intensity they had created a sense of fear and insecurity in the minds of muslims and as a follow-up reaction the occurrences of communal riots took place in more than 150 places in the country and following the demolition of the disputed structure there was curfew in 150 places, prohibitory orders in 350 places and deployment of 800 companies of para-military forces and army and such steps of such magnitude or scale had never been earlier taken in the history of India after independence for controlling the communal situation and these facts, he has pointed out, have been admitted by RSSW-11.

He has also pointed out that the records show that in 1989 the communal incidents had touched all time high record because of such movements of the said associations. He has pointed out that incidents of bomb explosions, firing and stabbing were the main forms resorted to by both the communities in the year 1990 all over India and the large scale issuance of pamphlets, leaflets and playing of audio cassettes and video cassettes containing highly inflammatory speeches of the leaders of these associations vitiated the communal atmosphere since 1990 onwards.

He has urged that this communal tension is likely to be further intensified if these associations are allowed to work unfettered inasmuch as since 1984 they have decided to launch movements for liberation of not only Ram Janam Bhoomi temple but also of Krishan Janam Sthan temple and Kashi Vishwanath temple and documents show that they have taken at present one issue of Ram Janam Bhoomi and they plan to take up the other two issues subsequently. He has pointed out the statements of Acharya Giriraj Kishore dated December 2, 1992, that if Kar Sewa was stopped on December 6, 1992, not only the three mosques in respect of said three places but 3000 more mosques would be demolished which had been built after demolishing the temples. Sh. Dalmia's statement appearing at page 462 has been highlighted where he has admitted that there has been competitive communalism between the said two communities by show of strength in respect of Krishna Janam Sthan and this has come about only after a resolution was adopted by VHP in that regard.

He has also referred to slogans admittedly raised during the Rallies and processions by the workers of these three associations to the effect, "ABHI TO YEH JHANKI HAI, KASHI MATHURA BAKI HAI, AYODHYA TO AB HAMARI HAI, AB MATHURA KI BARI HAI". He has referred to statement of Sh. S. C. Dikshit (VHPW-1) who admitted that on account of raising of such issues the communal tension has increased inasmuch as unusual para military forces have to be stationed now at the said places which were not in issue prior to 1984. He has urged that since 1989 because of such movements being launched by these three associations the communal atmosphere had been so surcharged that it had resulted in low threshold of tolerance amongst both the communities which has resulted in communal violence taken place on religious functions of respective communities and also on slightest provocation which was not the situation prior to 1989.

He has argued that the respondents who had organised the Kar Sewa on December 6, 1992, on giving the assurance to the Supreme Court that no construction of any nature would be carried out and it would be only symbolic Kar Sewa still Acharya Giriraj Kishore in his statement admitted that Kar Sewa which was to be carried on December 6, 1992, was also to include construction of the temple which was in violation of the orders of the court.

He has argued that large scale Kar Sewaks were brought to Ayodhya and still no control was exercised when 200-300 Kar Sewaks went ahead and demolished the disputed structure. Mere fact that the leaders from the stage went on making half-hearted appeals asking the said persons not to damage the structure is of no consequence inasmuch as the facts show that the whole crowd was chanting slogans and was encouraging he said persons to go ahead with the demolition of the disputed structure. He has urged that if the leaders were not in favour of the demolition of the disputed structure, they could have taken steps to physically stop those persons from proceeding with the demolition of the disputed structure but no such steps were taken. He has urged that 200-300 persons could not have easily demolished the disputed structure unless they had come with such a plan after obtaining training and also not without connivance of the respndents.

He has urged that there is a sufficient cause for confirming the ban on these organizations inasmuch as there is still apprehension that if the ban is removed these organizations would launch movements for the other two places which would again surcharge the already sensitive communal situation in this country and would be again a threat to the secular image of this country in the eyes of the world and communal violence is also likely to excalate and thus, this Tribunal should confirm the said notifications.

He has also pointed out that in Ram Janam Bhoomi Yagya Samiti S/Shri Ashok Singhal, Onkar Bhave, Dinesh Tyagi, Pankaj & Mahesh Narain Singh are the members of RSS out of total number of ten trustees and similarly in the Media Centre Acharya Giriraj Kishore, Shri Baleshwar Aggarwal, Shri Sudershan, Shri Davinder Swaroop, Shri Bhanu Pratap Shukla and Shri B. P. Toshniwal out of the seven trustees are members of RSS while only Shri V. H. Dalmia is not a member of RSS and similarly in Ram Janam Bhoomi Nyas Samiti S/Shri Ashok Singhal, Acharya Giriraj Kishore, Moropant Pingle, Onkar Bhave, B. P. Toshniwal & Surya Kishan are members of RSS out of fourteen trustees. He has also referred to the fact that some exercises of climbing the mound were undertaken by Kar Sewaks before December 6, 1992, to make them experts in climbing the disputed structure and demolishing the same and a photograph of such exercises has been proved in this case. He has pointed out that the mound on which the exercises were carried out was at a distance of about 2-3 kilometres from the disputed structure whereas the witnesses of VHP had made statements in respect of a mound which was at a distance of 200 or 300 metres from the disputed structure which according to them was levelled for making the ground smooth and they had not made any statement with regard to the mound on which such exercise were carried out.

Controverting the allegations of the respondents that the Central Government particularly the Ruling Congress Party have been following a policy of appeasement of minorities, the learned counsel for the Central Government has stressed that one of the points raised in this connection is that Haj visits of devout Muslims to Saudi Arabia are being subsidised by the Government and which is now in consonance with the secularism enshrined in the Constitution. He has argued that the Committee which looks after the said issue is headed by Shri Atal Behari Bajpayee, a prominent leader of BJP and more over it is not only this visit of Muslims to their holy place which is subsidised by Government but the Government also subsidises the visits of devout Hindus to Mansarovar every year. He has also controverted the allegation that Hindu refugees who have come over here due to turbulent conditions prevailing in Kashmir are not being provided any necessary help by the Central Government. He has urged that all such necessary help is being rendered to such refugees. He has also controverted the allegation that the Indian population which comprises of most of the Muslims who are evacuated from Kuwait during Iraq-Kuwait War have been allegedly air-lifted free of cost by the Central Government. He has urged that in fact, those costs have been reimbursed by the U.N.O.

Coming to the allegation that the well-known judgment of the Supreme Court in Shah Bano's case being reversed by the legislation, he has urged that an Act has been passed by the Parliament in that connection and this cannot be termed as amounting to any appeasement of the minority. He has also referred to the allegation that the family planning programme being not followed by the Muslims whereas Hindus have been following the same with the result that there is possibility of Hindus becoming in minority in this country. He has pointed out that his allegation has no force. The census figure of 1951 depicted that there was 89.34 per cent population of Hindus whereas Muslims' population was about 10.46 per cent in the census of 1981, the figures are 87.92 per cent and 12.08 per cent respectively. He has argued that family planning programme is a national programme which is sought to be implemented amongst the population of India without making any distinction on the basis of religion, caste or creed and the reason for slight increase in the Muslim population than the population of Hindus is that most of the Muslims are not educationally as advanced as Hindu population has become. He has urged that this is a social problem which has to be tackled on all fronts with spread of modern education amongst the minority, particularly in Muslims and with economic conditions becoming better, there is no reason why the Muslims would not also adopt family planning programmes. So, he has urged that all these allegations that policy of appeasement of minorities particularly in favour of Muslims is being pursued, has no basis.

The learned counsel for the Central Government has also referred to the evidence to show that the provocative leaflets which had the tendency to cause communal disharmony were proscribed by the Rajasthan Government when BJP was in power. He has pointedly argued that BJP is a political wing of the RSS and for purposes of gaining electoral advantages these three organizations and BJP have been raising emotional issues for Hindus and only at the time of General Elections in the country momentum is build up on such emotional issues so as to have vote banks amongst Hindus for their political party BJP. He has argued that if the three organizations were only raising the demands and pursuing them peacefully within the forecorners of the law there could have arisen no ground for imposing ban on these associations. Mere raising issue which Hindus may by and large feel come within their faith would not by itself lead to any communal tension and communal violence, but if such an issue predominantly results in furthering communal tensions and manner in which such an issue is raised brings about any feelings of illwill or enmity between the two major communities of this country, the Govt. is duty bound in law to ban such associations raising such atmosphere in the country which is likely to cause communal tensions and communal violence in this country. He has pointed out that Ram Janam Bhoomi movement if it had been carried out in accordance with the orders of the court and within the limits might not have brought about any such serious communal situation in this country but by making provocative speeches urging that such is a matter of faith and the same would be beyond the judicial purview and making speeches that at all costs the disputed structure would be shifted or demolished and Lord Ram's temple would be built and the use of vituperative words against the Muslims particularly in the speeches of Sadhvi Rithambra and Acharya Dharmendra had resulted in counter reaction which has surcharged the emotions of the Muslims and the demolition of the disputed structure for whatever reason has resulted in communal holocast to such a large scale never witnessed in this county after independence and

for all these reasons there is a sufficient cause proved for declaring these associations as unlawful under the said Act.

Sh. R. P. Bansal, Senior Advocate for the RSS, in the opening of his arguments in opposing the ban on RSS had given the brief history of the RSS and has referred to the constitution of the RSS which delineates the objects of the RSS. He has pointed out to the history of this country mentioning that a different ages in this country predominantly populated by Hindus the people belonging to other religions who had faced atrocities in other places because of their faith have been coming to this country and have been assimilated in the culture and traditions of this country and have become part of the ethos of this country, particularly he has referred to the migration of Jews and Parsis to this country. He has pointed out that first attack on Hindus by a Muslim Ruler from outside was made many many years ago by one Mohammad Bin Qasim who after ravishing some parts of this country had returned to his own place and after 300 years, Mohammad Gaznavi and Mohammad Gauri raided this country and destroyed many temples particularly the pristine temple of Somnath and thereafter in 1520 AD Babar fought a battle of Panipat and his army was led by one Mir Baqui who was a Shiya Muslim and for celebrating such victory in that battle Mir Baqui under the directions of Babar, in order to teach a lesson to the Hindus and to shame them, had got constructed the disputed structure after demolishing the existing Hindu temple at Ayodhya and he raised the structure at the middle of the place around which Panch Koshi and Chaudah Koshi Parikarma used to take place by the pious Hindus since time immemorial

He has urged that the structure so raised was not in fact, a mosque because mosque must have a water tank for washing out hands which a devout Muslim has to do in the ceremony called 'oozu' before offering prayers in a mosque and a mosque must also have a minaret while the disputed structure had no such things and thus, same was wrongly being described as mosque in any case. According to the learned cousel, in the struggle to redeem this place by Hindus soon after the structure was raised, many thousands of people have died for the cause and in 1857 the Britishers, who were in power in this country earlier, following the policy of divide and rule among Hindus and Muslims, did not allow the agreement which had been earlier arrived at between the Hindus and the Muslims that this place would be handed over to the Hindus.

He has further pointed out that under the patronage of the then British Rulers the Muslims started offering prayers in this disputed structure and this continued upto 1936 and since 1936 Hindus have been continuously in possession of this structure and offering 'Puja' 'Archna' at this place treating the same as birth place of Lord Ram. He has then referred to one Mr. Nayyar, District Magistrate, who in 1947 had also given out that three holy places of Hindus at Ayodhya, Varanasi and Mathuura must be liberated to restore the past glory of Hindus and he then referred to some conflicts of ideas occurring between Sardar Patel and Sh. Jawaharlal Nehru and referred to the fact that Somnath temple was repaired and restored to its former glory in 1950 by a trust constituted under the guidance of Sardar Patel and Babu Rajendra Prasad, the then President, had inaugurated the said temple although he was being dissuaded to do so by Sh. Jawaharlal Nehru on the plea that in a secular country the President of the country should not participate in such religious ceremony.

He has also argued that a Muslim mosque which stood built near that Somnath temple was demolished to restore the Somnath temple to its previous glory. He has also pointed out that after the death of Sardar Patel Mr. Nayyar, District Magistrate, was removed and the lock was put on the gate of the said structure in 1949 or 1950. This action appeared to have been taken under the provisions of Section 145 of the Code of Criminal Procedure and the said locks were got opened by Hindus by getting an order from the District Judge in February 1986. He has pointed out that a descendant of Mir Baqi who could have some claim to this structure had agreed for the location of this structure but the All India Babri Masjid Action Committee and All India Babri Masjid Coordination Committee were formed, according to the counsel, at the instigation of the parties opposed to BJP and the battle cry was raised for not allowing this structure to be re-located or to be demolished for building Lord Ram's temple at the spot.

He has argued that RSS and the other two banned associations have never spoken against Muslims of this country whom they consider as their brothers and whom they want to immerse themselves in Indian culture and not to be swayed by any extra territorial loyalities and they have never had any ill-feelings or feelings of enmity against the Muslims. It is urged that they have been taking movements to persuade the Government to find a solution to this problem and has been persuading the Muslims to also respect the overwhelming emotional sentiments of majority community in respect of these three holy places. He has pointed out that till December 6, 1992, the Government had not felt that any activities of these associations have any likelihood of causing any communal tension and had caused any such communal tension yet suddenly on demolition of the disputed structure which was unfortunate event which was not the object of the three associations, a ban has been imposed on these three associations to gain political advantage over the BJP whch is supported by these organizations in political field. He has argued that this ban has been imposed to appease the Muslim leaders and appease Muslim legislators who pressurized the Government for imposing such ban on Hindu parties, he has also urged that even the Leftist Parties who have been all along opposed to Hindu Parties have also pressurized the Government to impose this ban and certain elements in the Ruling Party hvaing anti-Hindu feelings have also raised this demand and the Ruling Party having precarious majority in the Lok Sabha, in order to save its Government at the Centre, has succumbed to such prossures for political reasons.

Coming to the notiacation banning the RSS, Sh. Bansal has vehemently argued that the contents of this notification do not show any legal ground for declaring the RSS as unlawful association under the Act. Referring to the first ground mentioned in the notification he has pointed out that except reproducing the words of Section 153A of the Indian Penal Code, nothing has been mentioned as to what were the activities of RSS from which any inference could be drawn that such acts of the RSS are covered by the provisions of the said Section.

Coming to the second ground mentioned in the notification that the RSS has been making imputations and assertions that members of certain religious communities have alien religions and cannot, therefore, be considered nationals of India thereby causing and likely to cause disharmony or feeling of enmity or hatred or illwill between such members and other persons, he has contended that these allegations are completely vague, they do not show what sort of imputations and assertions have been made by which leaders of RSS, at what point of time and at what place and who are those religous communities whom they have alleged to be having any foreign base and which are the communities whose members are likely to get feelings of enmity or hatred on account of such alleged imputations and assertions. He has argued that averments made in this notification on this ground are totally vague and in eye of law they do not amount to any legal ground for imposing the ban.

Coming to the last allegation made against the RSS in this notification that RSS Swayamsewaks had participated in the demolition of the structure commonly known as Ram Janam Bhoomi-Babri Masjid situated in Ayodhya in the State of Uttar Pradesh on December 6, 1992, he has pointed out that this is no legal ground for banning the RSS. There is no allegation in this ground that the demolition of this structure has resulted or likely to result in any disharmoney or feeling of enmity or hatred or illwill between any communities in this country. He has urged that on the mere allegation that in the demolition of the disputed structure some RSS Swayamsewak had participated, no ban could be imposed on the RSS. It is not alleged in this notification that the RSS had planned or aided in demolition of the disputed structure. He has urged that even if some members of RSS on their own indulged in any such activity, the same would not give any ground for imposing the ban on the RSS. He has thus urged that as the notification, in fact, does not give any legal ground for imposing the ban, there arises no occasion for this Tribunal to hold that there is sufficient cause for declaring the RSS as unlawful association. He has pointed out that the Central Government has no jurisdiction or authority in law to refer to any other grounds which are not enumerated in the notification.

He has pointed out that it is on account of the Criminal Law (Amending) Act of 1972 that clause (g) in Section 2 of the Act was inserted with regard to unlawful associations and Section 99A was introduced in the Code of Criminal Procedure which entitles the Government for prescribing certain objectionable publications if they are likely to cause disharmony or raising of feelings of illwill or enmity amongst the communities. Section 95 of the New Code of Criminal Procedure is similar to Section 99A of the Old Code of Criminal Procedure. He has referred to certain judgments in support of his contention that a statutory functionary has to only go by the grounds given in the order and is not entitled to look to any other grounds which are not mentioned in the order.

In support of the contention that no evidence can be considered by this Tribunal at the back of the respondents as the same would be in violation of the principles of natural justice, Mr. Bansal has cited well-known case of Smt. Maneka Gandhi Vs. Union of India, A.I.R. 1978 Supreme Court 597. In the said case, the passport of the petitioner was impounded without giving her an opportunity of hearing. The Supreme Court held that although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature and the principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice. It was emphasised that natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action and the enquiry must always be done fairness in action demand that an opportunity to be heard should be given to the person affected. It was emphasised that law must now be taken to be well settled that even an administrative proceeding which involves civil consequences, the doctrine of natural justice must be held to be applicable.

Then he has referred to another famous case Olga Fellis Vs. Bombay Municipal Corporation, A.I.R., 1986 Supreme Couurt 180 in which it was laid down that procedure prescribed by law for the deprivation of the right conferred by Article 21 must be fair, just and reasonable. It was held that the procedure prescribed by law for depriving a person of his fundamental rights must conform to the norms of justice and fairplay and the procedure which is unjust or unfair in the circumstances of a case attracts the vice of unreasonableness thereby vitiating the law which prescribes that procedure and consequential action taken under it.

To the similar effect is the ratio laid down in M/s. Erusian Equipment and Chemicals Limited Vs. State of West Bengal, A.I.R. 1975 Supreme Court 266.

In support of the contention raised by Mr. Bansal that the ground mentioned in the notification must contain material facts and material particulars Sh. Bansal has sought support from another judgement S. N. Balakrishna Vs. Fernandez, A.I.R. 1969 Supreme Court 1201. The Supreme Court, while interpreting the provisions of Section 83 of the Representation of the People Act 1951 had held that if the petition lacks in disclosing the primary or material facts, then the said election petition is liable to be rejected at the very threshould. He has urged that the grounds mentioned in the notification lack all material facts and particulars and thus, on the face of it the same is nonest and liable to be cancelled.

He has also urged that the effect of this notification has resulted in putting to stand still all admittedly laudible activities of R.S.S. and had resulted in depriving the R.S.S. and its large membership of their fundamental rights available to them in Article 19 and 21 of the Constitution of India and keeping in view such drastic adverse results of the notification in question, the standard of proof for proving the allegations against the R.S.S. should be as required in a criminal trial. The Central Government must prove the allegations by cogent convincing and reliable evidence for bringing home the allegations to the R.S.S. beyond reasonable doubts. He has also urged that mere suspicion cannot be the substitute for proof and there is a long distance which has to be travelled from the suspicion to proving a charge. He has sought support from Varkey Joseph Vs. State of Kerela, JT 1993 (3) Supreme Court 163 where, while dealing with the standard of proof in a murder case, the Supreme Court has laid down that suspicion is not a substitute for proof. There is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond all reasonable doubt.

Although Mr. Bansal has vehemently contended that the various books and magazines relied upon by the Central Government have not been proved legally yet in the alternative, he has urged that only small portions of the articles or speeches being relied upon by the Central Government should not be read in isolation and in order to have a real appreciation of the matter, the whole contents must be read and he has made reference to Gopal Vinayak Godse Vs. Union of India, A.I.R. 1971 Bombay 56.

In support of his contention that only the grounds mentioned in the notification can be adjudicated upon under the Act by this Tribunal, he has taken support from Mohinder Singh Gill Vs. Chief Election Commissioner, A.I.R. 1978 Supreme Court 851. It has been laid down in this judgement that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reason so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. It was held that otherwise an order bad in the beginning may, by the time it comes to the Court on account of a challenge, get validated by additional grounds, later brought out.

He has also referred to State of U.P. Vs. Lalai Singh Yadav, A.I.R. 1977 Supreme Court 202 which pertains to an order made under Section 99-A of Criminal Procedure Code. Section 99-A contemplates three facets that the book or the document contained any matter and such matter promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of India and the statement of the grounds of Government's opinion. It was laid down by the Supreme Court that when the Section says you must state the grounds of opinion, it is no answer to say that they need not be stated because they are implied. It was held that if you do not state the thing when you are expressively silent about it and where there is a statutory duty to speak, silence is lethal sin for a good reason disclosed by the scheme of the fasciculus of sections. It has held that the grounds or reasons linking the primary facts with the forefeiter's opinion need not be stated at any great length and that would depend on the facts of each case. In some cases a laconic statement may be enough, in others a longer ratiocination may be proper but never laches to the degree of taciturnity.

Taking the analogy of the provisions of Order 6 Rules 4 and 5 of the Civil Procedure Code, Sh. Bansal has contended that notification itself should have specified not only the ground but also the particulars and the facts and he has sought support from Rev. G. Harish Chaplain Vs. Prem Nath, 1966 (68) Punjab Law Reporter 16 in which it was held that Rule 5 of Order 6 of Civil Procedure Code may appropriately be read alongwith Rule 4, which enjoins a party to give in his pleadings particulars of material facts. Particulars connote the details of the case set up by the party. This judgement lays down that if full particulars are not given, the opposite party may apply to the Court under Rule 5 to secure further and better particulars of the matters stated in the pleadings. It is held that furnishing of sufficient particulars of the material facts is the legitimate due of the opponent and the Court has a duty to see that the pleadings are plain, clear and full so that each side knows the precise nature of the case he has to meet.

Learned counsel has also referred to Harnam Dass Vs. State of U.P., A.I.R. 1961 Supreme Court 1662 which was also case pertaining to the provisions of Section 99-A and 99-D of the Old Criminal Procedure Code. It was held in this judgement that where the Government did not state the grounds of its opinion in its order, the High Court must set aside the order for it cannot then be satisfied with the ground given later on by the Government justifying the order.

A Full Bench judgement of this Court reported in Mohd. Khalid Vs. Chief Commissioner A.I.R. 1968 Delhi 13 has also been cited for this proposition. It was held in this judgement that the Government while issuing a notification under Section 99-A of the Criminal Procedure Code has to state the grounds of its opinion on the basis of which it comes to the conclusion that a newspaper, book or documents contain any seditious matter, or any matter which promotes or is intended to problems feelings of enmity or hatred between different classes of citizens of India. It was held that the grounds of opinion are a vital and held that the grounds of opinion are a vital and essential part of the notification because it is those grounds which would reveal the justification for the issuance of the notification and the requirement being an imporative and integral part of the section, it would follow that a notification and an order to be legal and effective must comply with and fulfill that requirement and such a compliance is sine qua non of the validity of the notification and a notification which does not incorporate the grounds of the opinion would not be in conformity with the law and law in this respect has to be substantially complied with and it is not enough to merely reproduce the language of Section 124-A, 153-A, or 295-A of the Indian Penal Code without specifying as to how or in what manner there has been contravention of the provisions of those sections.

He has also referred to Narayan Das Indurkhya Vs. The State of Madhya Pradesh, A.I.R. 1972 Supreme Court 2086. In his case also, it was clearly laid down that in such cases, the Government has to give the grounds of its opinion and clearly grounds must be distinguished from the opinion. The grounds of the opinion must mean the conclusion of facts on which the opinion is based and there can be no conclusion of facts which has no reference to or is not ex-facie based on any fact.

The reliance was placed on the case of Harnam Dass (supra) in which some books were forefeited as they were stated to contain some matter which was punishable under Section 153-A and Section 295-A. The order did not show as to which communities were alienated from each other or whose religious beliefs were wounded. The Court held that such an order cannot be said to have contained the grounds for forming the opinion as contemplated by the statute and such an order was bad in law.

Reference is made to Ram Bahadur Vs. State of Bihar, A.I.R. 1975 Supreme Court 223 where the provisions of Maintenance of Internal Security Act 1971, particularly Sections 3 and 8, came up for consideration. It was held that where the order of detention is founded on distinct and separate grounds, if any one of the grounds is vague or irrelevant, the entire order must fail.

It has been then argued that if a statute requires something to be done in a particular way, then it must be done in the said way and in no other way. Reliance is placed on Hari Vishnu Kamath Vs. Ahmad Ishaque, 10 Election Law Reporter 216.

Mr. Bansal has vehemently contended that interpretation sought to be put by the Central Government counsel that the Tribunal has to satisfy itself regarding the existence of sufficient cause even on the material which may had not been available with the Central Government while issuing the notification is not in consonance with law. He has argued that the words "There is sufficient cause" appearing in Section 4(1) for declaring on association unlawful would not mean that the Central Government could produce any sort of material and evidence before the Tribunal which has no relevancy to the grounds mentioned in the notification or the Central Government could rely on any other ground which was not incorporated in the notification. He has argued that Tribunal has to be satisfied regarding existence of the sufficient cause only on the material which was taken into consideration by the Central Government for forming the opinion for issuing the notification.

He has relied upon A. K. Roy Vs. Union of India, A.I.R. 1982 Supreme Court 710. Section 11(2) of the National Security Act, 1980 required that the report of the Advisory Board shall satisfy itself "as to whether or not there is sufficient case for the detention of the person concerned". It was urged before the Supreme Court that Advisory Board must decide two questions, one whether there was sufficient cause for the detention of the person concerned and the other whether it is necessary to keep the person in detention any longer after the date of the report of the Advisory Board. These contentions were negatived by the Supreme Court and it was held that the said words appearing in the statute imply that the question to which the Advisory Board is to apply its mind is whether on the date of its report there is sufficient cause for the detention of the person and the enquiry necessarily involves the consideration of the question as to whether there was sufficient cause for the detention of the person when the order of detention was passed and there was no justification for extending the jurisdiction of the Advisory Board to the consideration of the further question whether it is necessary to continue the detention of the person beyond the date on which it submits its report or beyond the period of three months after the date of detention. It was held that the said question would be for the detaining authority to decide. It was again laid down in this judgment that the duty and the function of the Advisory Board are to determine whether there was sufficient cause for detention of the person concerned on the date on which the order of detention was passed and whether or not there is sufficient cause for the detention of that person on the date of its report.

Mr. Bansal has also contended that it is not correct proposition of law propounded by Sh. R. K. Anand, Central Government counsel, that there should be any liberal approach to the construction of the provisions of the present Act as they contemplate only an inquiry and not a trial. He has argued that the provisions of the present statute encroach upon very vital fundamental rights of the citizens and associations and thus the provisions of the statute should be strictly interpreted and if there is any ambiguity in the interpretation, then such construction should be called out which is in favour of the protection of the fundamental rights. He has placed reliance on Maxwell on the Interpretation of Statutes 12th Edition page 251 wherein it is laid down that the statute which encroaches on the rights of the subject, whether as regards person or property are subject to strict construction in the same way as penal acts. It is recognised rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity the construction which is in favour of the freedom of the individual should be adopted.

It has been the contention of Mr. Bansal that the story of linkage between these three associations does not find mention in the notification and thus, this amounts to setting up a new ground for banning the said organisations which is not permissible to be put forward before the Tribunal. He has further argued that the evidenciary facts mentioned in the resume which have no nexus with the grounds mentioned in the notification cannot be at all considered relevant and any evidence and material produced to prove such evidenciary facts must be eschewed by the Tribunal as the same is inadmissible in evidence.

It has also been contended by him that no witness who had personal knowledge of the contents of the meetings of the Committee of the Cabinet on Political Affairs, which had allegedly formed the opinion for banning the said three organisations, has been produced. PW-18 and PW-7, the two Government officers produced by the Central Government before this Tribunal admittedly were not present in the said meeting of the Committee of the

Cabinet on Political Affairs and thus, they are not in a position to know as to what material, in fact, was produced before the said Cabinet Committee. He has argued that the best person to prove that the Government has formed the relevant opinion for banning the three organisations was either one of such members of the Cabinet Committee or the Cabinet Secretary who presumbaly is bound to be present in said meetings of the Cabinet Committee. He has urged that an adverse inference ought to be raised, for not producing the best evidence, against the Central Government by holding that in fact no relevant material was made available to the said Cabinet Committee for formation of an opinion.

He also pointed out to the statement of PW-18 when he has deposed that he had prepared a note based on some material made available to him by I. B. and he had proposed banning of six communal parties in that note and had also made annexures, one for each party, and had attached the same with the note which he had sent to the Secretary, Home and after the same was approved by the Home Minister, the same was sent by him to Cabinet Secretary. According to his testimony, he had made available the relevant material for perusal of the Cabinet Committee. Mr. Bansal has argued that neither the annexure pertaining to these three organisations in question have been produced on the record and thus, it should be held that the best evidence has been kept away from the Tribunal.

He has also referred to the statements of PW-7 and PW-18 wherein they have mentioned that the only material pertaining to the years 1990 to 1992 was taken note of in respect of these banned organisations. He has pointed out that in evidence the Central Government has produced material even of the years prior to 1990 which is not admissible in evidence. He has also referred, particularly, to documents PW18/R-2 to PW18/R-4 received by the I.B. only after it is not understandable as to how such documents could have been at all available to the said Cabinet Committee for consideration and if such documents were not considered by the said Cabinet Committee the said documents are not admissible in evidence.

He has also pointed out that plea of the Central Government before the Tribunal that the three organisations were interlinked or one organisation is the front organisation of another is totally a fallacious plea in as much as there have been National Front comprising of member of different political parties and no one could take the plea that the parties constituting National Front become front party of another. He has also pointed out that the press terms the political parties having left political leanings as Left Front and still those parties obviously cannot be treated as front organisation of each other. He has urged that mere fact that certain organisations or associations have common Hindu ethos as their objective would not make those organisations as a front organisation of each other or they could be termed as interlinked parties.

He has referred to the views expressed by R.S.S. leader Prof Rajinder Singh in the book titled as 'Vision in Action', Ex. RSSW 9/2 at pages 315, 604 647 and 648 wherein it has been mentioned that R.S.S. is a training institute and after members of the R. S.S. undergo the training, they are free to join any field of activity according to their liking and they spend batter part of their lives in activities which they like most and like a father's house, the R. S. S. welcomes them back for R. S. S. work whenever any member of R. S. S. wishes to come back and participate in the activities of R. S. S He has pointed out that it is clearly mentioned in that book that each such organisation or association is an independent entity and having its own respective objects and separate set-ups for carrying out their objects enshrined in their own constitutions. He has argued that if the three organisations were one and the same, there is no earthly reason as to why three separate notifications have been issued by the Central Government. He has urged that issuance of three separate notifications rather makes it evident that even the Central Government treates these three organisations as separate legal entities.

Referring to the audio and video cassettes produced by the Central Government, he has argued that same have not been proved in accordance with law and the same are also not admissible in evidence in as much as no such details of audio and video cassettes have been mentioned either in the notification or even in the resume. He has referred to Ran Singh Vs. Col. Ram Singh, A. I. R. 1986 Supreme Court 3 wherein following conditions have been laid down by the Supreme Court for admissibility of a tape recorded statement :—

(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows a logical corollary that the first condition for the the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

(2) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.

(3) Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

(4) The statement must be relevant according to the rules of Evidence Act.

(5) The recorded cassette must be carefully sealed and kept in safe or official custody.

(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.

He has argued that none of the aforesaid conditions have been fulfilled by the Central Government in proving the said audio and video cassettes. He has

pointed out that no member of the team of the newspapers which was deputed for video recording has been examined and neither the cameraman nor the technical hands have been put into the witness box to prove the video cassettes.

He has referred to the statement of VHPW3, Mr Jain, who has deposed that technically, it is feasible that audio recording can be changed, deleted, altered and added to and similarly, video cassettes could also be changed by inserting scenes recorded at different times in one film and also delete certain scenes and it is feasible that scenes recorded at different times could be shown as one film purported to be recorded at one time and even background of the scences could changed. He has also argued that the video cassette of January 1993 was obviously not available as a relevant material at the time the ban was imposed by the Central Government, so the same is also inadmissible in evidence on that score. He has also argued that the original master tapes and the master films have not at all been summoned before the Tribunal for proving the copies of the audio cassettes and video cassettes placed on the record. He has also argued that Mr. Padhi, PW-7, has admitted that I. B. had also prepared video cassettes of the Kar Sewa which took place on December 6, 1992 at Ayodhya but the same has been suppressed. He has argued that if the said video cassette had been produced and proved, the same might have supported the case of the respondents that, in fact, there was spontaneous movement by some people acting as kar sewaks in going ahead with the demolition of the disputed structure despite efforts made by the leaders of the three organisations and other kar sewaks to stop them from causing any damage to the disputed structure.

Coming to the newspapers and magazines, he has argued that the various issues of the newspapers 'Organiser' proved on record by the Central Government were not referred to in the resume nor copies of the same were produced alongwith the resume and thus, they are inadmissible in evidence. He has argued that 'The Organiser' weekly is published by an independent company which also publishes 'Paanch Janya' Hindi magazine. He has also argued that the contents of the news items which have been referred to by the Central Government appearing in the various issues of the newspaper 'Organiser' have not been put to any of the witnesses, so the same cannot be said to contain the correct speeches or press releases allegedly issued by the leaders of the three banned organisations.

Referring to the booklet titled 'Shakha', Ex. RSSW 9|3, he has argued that the same is not published by R.S.S. but it is published by an independent company Gyan Ganga Prakashan. He has argued that nothing adverse mentioned in that booklet would bind the R.S.S. Similar is his argument about the book RSSW 9|14 and other books being relied upon by the Central Government. In the alternative, he has argued that the said books be read as a whole to find out as to what had been stated therein and whether they come out in supporting any plea of the Central Government that these organisations can be treated as one and the same.

He has referred to the Constitution of the R.S.S., Ex. PW 7|R-3 and has pointed out that Shri Padhi at first had produced an earlier Constitution of R.S.S. but later on he himself admitted that said Constitution was amended and present Constitution of R.S.S is Ex. PW7|R-3. He has pointed out that it is no the case of the Central Government that any of the objects of the R.S.S. as contained in the said Constitution, are, unlawful so as to condemn the R.S.S. as unlawful association. He has argued that PW-7 has no personal knowledge of the facts stated by him. He claims to have made the statement on the basis of the record and thus, whatever record he has referred to ought to have been proved keeping in view the provisions of the Indian Evidence Act. He has argued that the reports of the I.B. not being primary evidence are not admissible in evidence per se. He has contended that Mr. Padhi, being a Government servant, has only towed the line of the Central Government in coming as a witness in support of the ban. He referred to various portions of his statement to show that even he has admitted that these organisations have, by and large, laudible objects in view but he has only pointed out that as the various movements launched by these associations on Ram Janam Bhoomi movements had surcharged the communal atmosphere which had culminated in demolition of the disputed structure which resulted in communal riots, thus, the Central Government thought of imposing the ban on these organisations. He has urged that if demolition of the disputed structure was not the object of these three organisations at any time and the said unfortunate event occurred despite the pleas made by these three organisations not to harm the said structure, then there could be no responsibility of these organisations if communal riots took place wherein admittedly Muslims had played the agressive role.

He has argued that if certain fundamentalists and fanatics in the ranks of the Muslims take in their heads at first to make all round preparations of collecting illegal amunitions and fire arms and other weapons and then to cause riots, it cannot be said that these three banned organisations had any role to play or were responsible for said holocaust perpetrated by such condemnable elements in Muslims.

He has also urged that statements of the injured relied upon by the Central Government to show that some of them belong to these banned organisations are not admissible in evidence as none of the said injured have been examined before this Tribunal and the officers who recorded such statements have also not appeared in the witness box. He has also urged that neither the resume nor the annexures attached to the resume have been signed by any authorised person on behalf of the Central Government, so they cannot be looked into at all.

He has also referred to the statements of the journalists, examined by Central Government who had only proved their reports appearing in their newspapers

and he has argued that these journalists were inimically inclined towards the banned organisations and had come from the papers having left leanings, whose apathy towards the banned organisations is well known, and they have given concocted versions and have tried to set up a case which was not even pleaded by the Central Government. It was not the case of the Central Government that there was any pre-planned objective of the three banned organisations and demolishing the disputed structure and even the White Paper issued by the Central Government proved in this case does not refer to any such allegation.

He has also, in the alternate, argued that even if it is to be assumed for the sake of arguments that some of the members of these organisations had participated in demolition of the disputed structure, even then these organisations cannot be blamed for the same and the said act of the said members was individual to them and he has referred to Mr. Justice Rangnath Mishra's report regarding the riots which took place after the assassination of then Prime Minister Smt Indira Gandhi wherein he had absolved the Congress Party as such although he had come to the conclusion that some important local leaders of the Congress Party and some Congress persons had caused such riots.

He has also placed reliance on the contents of the White Paper published by the B.J.P. wherein historical facts have been given with regard to the disputed structure which according to Mr. Bansal makes it very evident that the disputed structure was not a functional mosque for quite a number of years and thus, it could not be referred as a mosque when the disputed structure was demolished. He has vehemently argued that it was the description of this demolished structure as Mosque by the Prime Minister in his broadcast on Television that had vitiated the atmosphere and had promoted the fundamentalists and fanatics amongst the muslims not only in this country but also in Pakistan, Bangladesh and U.K to demolish a large number of Hindu temples. He has argued that if the Prime Minister had not termed this disputed structure as mosque but had given the true facts with regard to the disputed structure, perhaps such occurrences might not have taken place. So, he has urged that no responsibility could be fixed on these organisations for the communal occurrences which took place due to the demolition of the disputed structure. So, he has prayed for the cancellation of the notification

BAJRANG DAL

Shri Som Nath Marwaha, Senior Counsel representing the BD, in his arguments while taking the same legal pleas which has been urged by Shri Bansal has highlighted only the alleged appeasement policy of the Central Government being pursued since the dawn of independence which according to him has pampered the minorities particularly Muslims in not falling in the main stream of this country. He has mentioned that the affidavit of Shri Vinay Katiyar given in examination-in-chief makes reference in detail to the various points which make it very clear that the minorities particularly Muslims are being pampered at the cost of the majority community. He has argued that these banned organizations have no hatred against the Muslims and they treat there as their brothers but the fundamentalists and fanatics amongst the Muslims are not allowing the Muslim community to come to terms with this country and they are having their eyes focused outside the country either towards Pakistan or Bangla Desh or towards Souhi Arabia where their holy places are located.

He has referred to the contrasts and competitive Hindu culture and Muslim culture in existence in this country since now centuries and he has vehemently argued that Muslim culture teaches the Muslims to become aggressive whereas Hindu culture makes the Hindu to be peaceful and tolerant but sometimes even the extreme of patience gets exhausted. He has in his arguments traced the history of India since time immemorial and had criticised the history depicted by late Prime Minister Shri Jawaharlal Nehru that Aryans were not original inhabitants of this counry. He has referred to the famous words of Lala Lajpat Rai when he and his followers, who were holding peaceful demonstration against the visit of Simon Commission, were brutally lathi charged by the Britishers, mentioning that every stick so hurled on them would prove a nail in the coffin of the British Empire and similarly he has tried to being comparison with the alleged policy of appeasement being followed by the Ruling Party at the Centre since dawn of independence. He has referred to the statement of PW7 particularly at page 177 where even that witness admitted that these banned organisations believe in unity of India and also believe in bringing about integrity in India and are opposed to India being divided. He has argued that if admittedly the three banned organizations have such laudable objects it is really mockery of justice that such parties should be banned and lakhs of followers of these parties should be deprived of pursuing their laudable objectives.

He has referred to some cases where even the saffron flag having the word 'Om' written therein being described as a communal flag and recitation of 'Gayatri Mantra' being sought to be also termed as religious symbol which efforts, according to him, have been thwarted by the courts. Objecting the material and evidence which is beyond the contents of the notification and even of Resume, he has argued that just like in examinations the students are given questions and they are answered by the students keeping in view the questions asked and the examiner cannot fail the students on the hypothetical opinion that some more questions which were never asked ought to have been answered, similarly the notification is the question paper which was based on the material allegedly put up before the Central Government and whatever answers had been found in the notifications in the shape of the opinion of the Central Government cannot be now sought to be added to by mentioning more questions/grounds either in the Resume or in the evidence.

Referring to the first ground mentioned in the notification pertaining to BD, he has pointed out that the same lacks in material facts and particulars and is mere reproduction of the words of Section 153-A of the Indian Penal Code and thus, is no ground in eyes of law.

Referring to the second ground mentioned in the notification that BD has been imparting exercises and drills to its followers, he has argued that this allegation is also vague. No primary facts have been given as to what sort of exercises and drills are being imparted and at what places and by whom. He has further argued that mere carrying out the drills and exercises for making the persons sound in mind and body cannot be termed as an allegation of the nature contemplated in the Act.

Referring to the last ground mentioned in the notification that the followers of BD participated in the demolition of the disputed structure, he has argued that the same is also quite vague and it does not indicate who were those followers who participated in such demolition and how BD as an association could be responsible for certain individual acts of some of the alleged workers of BD. Moreover, he has pointed out that mere demolition of the disputed structure is not covered by the provisions of Section 153-A of the Indian Penal Code but is covered by the offence mentioned in Section 295 of the Indian Penal Code if at all and he has argued that Section 2(g)(ii) of the Act does not cover the provisions of Section 295 of the Indian Penal Code whereas specific reference has been made to Section 153-A and Section 153-B of the Indian Penal Code and according to him, the said omission of the Parliament is deliberate and intentional inasmuch as there are lakhs of religious places in India and even if a small incident takes place at any remote place the Parliament did not want that such a damage to any religious place should lead to banning of the particular association who may be responsible for damage to particular religious place. He has mentioned that PW7 has referred to the alleged recording of the statements of some of the injured persons and only one person is stated to have belonged to BD and he did not make any admission that BD had directed him to demolish the disputed structure. He has also argued that the statements of injured are not admissible in evidence as they have not been proved according to the Indian Evidence Act.

He has also vehemently argued that in the notification there is no mention of any particular religious communities amongst whom disharmony, hatred, feeling of illwill are stated to have been encouraged by acts of the banned organisations. In support of his contention that the notification should have contained not only the grounds but also particulars and facts. He has cited Udhav Singh Vs. Madhav Rao Scindia, AIR 1976 SC 744, wherein the provisions of Order VI Rule 2, Order VI Rule 4 of the Code of Civil Procedure and particularly the provisions of Section 83 of the Representation of People Act, 1951, have been analysed. Section 83 of the said Act contemplates that an election petition must contain a concise statement of material facts and if any material fact has not found mention in the election petition the same is liable to be rejected. So, the contention raised before me is that notification is liable to be cancelled on this score alone that the grounds mentioned in the notification are vague and the notification lacks in furnishing any particulars.

Referring to the contention of the Central Government Counsel that the words appearing in the Act that there is "sufficient cause" would entitle the Central Government to lead evidence on any ground which is not mentioned in the notification and the Tribunal is entitled to take note of subsequent events and also the evidence and material produced with regard to subsequent events, he has argued that if this contention is to have any meaning then the Tribunal should come to the conclusion that with the passage of time the things have become peaceful in this country and there was no necessity to continue the ban on these parties. However, he has vehemently argued that the aforesaid words would only mean that the Tribunal is to examine the notificitions and come to the conclusion whether the opinion formed by the Central Government on the material available to the Government for banning the said organizations was justified or not.

He has argued that the disputed structure was not a mosque and thus, its demolition cannot furnish any ground as covered by Section 2(g)(ii) of the Act. He has also argued that the contention of the Central Government Counsel that in the reply of the BD the pleas taken by themselves show that the same are covered by the ingredients of the offence punishable under Section 193-A of the Indian Penal Code and thus, the Tribunal should hold that there is sufficient cause for declaring the BD as unlawful, is untenable. He has argued that BD believes in telling the true facts and only true facts have been mentioned in the reply and moreover the Central Government must stand on its own legs and stick to the grounds mentioned in the notification and no new grounds, even if allegedly furnished in the reply of BD, could be taken advantage of by the Central Government in support of the notification banning the organization.

With regard to the question as to how this Tribunal Another Vs. State of Andhra Pradesh & Others, AIR has made reference to Chaturbhuj Pande and others Vs Collector, Raigarh, AIR 1969 SC 255. This is a case which deals with the Land Acquisition Act and it was held that even if the witness is examined by one party or not effectively cross-examined, still the same does not mean that the court is bound to accept his evidence and it was held that the Judges are not computers and in assessing the value to be attached to oral evidence, they are bound to call into aid their experience of life.

He has also referred to Motor General Traders & another Vs State of Andhra Pradesh & others, AIR 1984 SC 121, where the Supreme Court was examining the validity of Section 32(b) of the A. P. Buildings (Lease, Rent and Eviction) Control Act of 1960. The question was whether the said provision makes a classification of buildings for the purpose of applicability of the Act in violation of Article 14 of the Constitution. It was held that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution. He has argued that similarly if for the sake of arguments, it is presumed that the notifications banning these organizations were valid when they were issued the same have become invalid with the changed scenario in the country.

Mr. Marwaha has also referred to White Paper issued by the Central Government in February 1993. Ex. PW7|R-12 where narration of events which took place on December 6, 1992 have been given at page 5 showing that everything was peaceful initially when 70,000 people had assembled at Ram Katha Kunj and 500 Sadhus and Sants were present on the foundation terrace for performing the puja and everything seemed to be going according to the plan announced by the organisers for doing a symbolic Kar Sewa and observing other formalities of Kar Sewa not involving violation of Court orders and the leaders of B. J. P., V. H. P., etc. were addressing the crowd and suddenly about 150 persons broke through the cordon on the terrace and started pelting stones on the police personnel and within very little time at about 12 noon, a thousand persons had broken into the Ram Janm Bhoomi Babri Masjid structure and 80 persons had managed to climb on the structure and they started damaging the domes and crowd had increased to 25,000 which was milling around outside the disputed structure and crowd increased to 75,000 at 2.40 P. M. Then he has referred to page 13 of the said booklet where in para 2.12 it is mentioned that the entire evidence had disappeared alongwith the disputed structure and it was tragic and ironical that the Ram Chabutra and Kaushalya Rasaoi, which remained as places of worship even during the period of Muslim and British rules had disappeared alongwith the disputed structure at the hands of the people professing to be devotees of Lord Ram.

Then he has referred to page 35 para 8.18 wherein it is mentioned that ex-gratia grants have been given, i.e. one lakh rupees to the next of kin in case of death and Rs. 50,000|- to those who are permanently incapacitated in the riots which took place as aftermath of the demolition of the structure. Mr. Marwaha has pointed out that the Muslims, who were the aggressors and had caused the riots and some of whom were killed and injured in the police firing and were aggressors, have been rewarded by these handsome doles being given by the Government which had the effect of encouraging the aggressive elements in Muslim community to get inspired to cause riots. He has also pointed out that even loans and house sites|shops have been promised to such persons. He has argued that White Paper clearly shows that there was no planned demolition of the disputed structure at the hands of the organisations in question and it was a spontaneous act of some persons who had come as kar sewaks in resorting to the demolition of the disputed structure and no blame can be attributed to the banned organisations. He has argued that this was the only reason given by Mr. Padhi, PW-7 for imposing the ban on these parties and if this reason is fallacious, then the notifications imposing the ban on these organisations have to be cancelled.

He has referred to Bikash Narayan Vs. State of Assam, 1984 Criminal Law Journal 81. This is a case of detention under the National Security Act of 1980. The detention order was challenged in the Court and one of the pleas raised was that the leaflets which were allegedly distributed during the elections and which were the cause for passing the order of detention had become useless and the High Court held that despite all the above, the impugned detention order does not merit its continuance because the leaflets which were stated to have been secretly distributed on January 23, 1983 were aimed at the election then impending and now that the election was practically over, the continued detention would be more punitive than preventive. Drawing analogy from these observations, Mr. Marwaha has vehemently argued that the root cause of the discord was the disputed structure and with the disappearance of said disputed structure for one reason or the other and with the conditions in the country having become normal the continuation of the ban on these three parties is not now justified.

Mr. Marwaha has also referred to pages 9 and 10 of White Paper issued by B. J. P. Ex. PW15|R-1 where in para 3.2, an extract of the speech delivered by Arnold Toynbee, a renowned historian, has been quoted wherein he has expressed the views that in no other country the monuments created by the ex-rulers to humiliate the local people had been tolerated and particular example is given of Russian occupation of Poland where Russians constructed an Orthodox Christian Cathadral on the central spot in the city of Warsaw which was done to give the Poles a continuous ocular demonstration that the Russians were now their masters and after re-establishing of Poland's independence, the Poles had pulled down that Cathedral. Mr. Toynbee had commented that the purpose for which the Russians had built it had not been religious but political and purpose had also been intentionally offensive. He lavished praise on the Indian Government that despite independence being gained, the Indian Government had not pulled down Aurangzeb's Mosques, particularly the two that overlook the ghats at Benaras and one that crowns Krishna's hill at Mathura and the purpose of Aurangzeb in building those three mosques was intentionally offensive and politically similar to the purpose of the construction of the said Cathedral by the Russians and these three Mosques intended to signify that an Islamic Government was reigning supreme, even over Hinduism's holiest of holy places. He also mentioned that Aurangzeb had a veritable genius for picking out provocative sites for construction of such mosques.

Then he has referred to the observation made by Mr. Will Durant in his book 'The Story of Civilisation', Volume-I, to the effect that the Mohammedan conquest of India is probably the bloodiest story in History, a discouraging tale, for its evident moral is that civilisation is a precarious thing whose delicate complex of order and liberty culture and peace may any time be overthrown by barbarians.

He has also referred to the article of Moulana Wahiduddin Khan appearing under the title 'A Place of Prostration' where the learned author has clearly held that according to Muslim religion, no mosque can be constructed at a site which could become, today or tomorrow, a controversial issue between the two parties He has also referred to his observation that it is quite unlawful in Islam to build a mosque on a land which had been wrongfully acquired. He had quoted an Islamic Jurist in that respect. So, the contention raised is that for all practical purposes, the disputed structure was not a mosque and since

1936 at least the same had been abandoned and no prayers had been offered at the disputed structure by the Muslims whereas Hindus have been carrying on 'Puja-Archana' at the disputed structure treating it as Ram Janmsthan since many years and thus, to describe the disputed structure as a Mosque by the Prime Minister on August 15, 1992 in his speech from the ramparts of Red Fort and then describing it again as a mosque when it was demolished in a telecast on television has aggravated the situation and that is the main cause of Muslims becoming aggressive and causing riots which had also resulted in demolition of large number of Temples in India and abroad at the hands of the fanatics.

Mr. Marwaha has also contended that the law laid down by the Supreme Court in the case of Lalai Singh Yadav (supra) is different from what had been laid down in the case of Babu Rai Patel (supra). So, he has contended that none of the leaflets and the speeches and the press releases produced on the record are covered under the provisions of Section 153-A and thus, there was no material on the basis of which these three organisations could be declared unlawful.

He has also cited State of Orissa Vs. Sudhansu Sekhar Misra, A.I.R. 1968 Supreme Court 647 wherein it has been laid down that a decision is only an authority for what it actually decides and what is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it and it is not profitable task to extract a sentence here and there from a judgment and to build upon it. So, he has argued that the observations of the Supreme Court in the case of Babu Rao Patel (supra) be examined keeping in view the facts appearing in that particular case which according to Mr. Marwaha are different from the facts in the present case. He has argued that comparison of the facts mentioned by Bajrang Dal in its reply with the facts appearing in the case of Babu Rao Patel, (supra) attempted by Sh. Anand, learned counsel for the Central Government is misplaced and he has argued that ban could not be justified on the pleas taken by Bajrang Dal in the reply which were not the basis for imposing the ban.

The learned counsel has also referred to pages 131 and 132 of the booklet 'Ram Janambhoomi Vs. Babri Masjid' written by Mr Koenraad Elst wherein he has observed that while Indian Constitution specifically declares that legislation should aim at the gradual establishment of a common Civil Code, replacing the separate religion based law systems but a fanatic Muslim leadership has persuaded the Central Government, when Sh. Rajiv Gandhi was the Prime Minister, to over-rule the Supreme Court decision which gave a Muslim divorced woman the right to alimony and another success of Muslim lobby had been to get recognition of Urdu as a second state language in Bihar and Uttar Pradesh and there has been an ominous demand raised by some Muslims for having separate Muslim electorates and for redrawing of constituencies borders to create Muslim majority constituencies. He has opined that it is in common Hindu perception that the Muslim minority in India is politically privileged, while the Hindu minorities in Pakistan and Bangladesh have been virtually exterminated and squeezed out but it is very fortunate that no Hindu communalist leaders is demanding reciprocity and rather they want that Muslims should be treated equally in the manner other citizens in this country are treated without their being pamperted. The demand is "Justice for all, appeasement of none".

Mr. Marwaha has also referred to certain extracts of the book 'Ayodhya and After—Issues Before Hindu Society' written by the same author where he has mentioned that during the period Sh. Chandershekhar was the Prime Minster, the V.H.P and other Hindu associations had produced strong pieces of documentary evidence and opinion of the archaeologists and also iconographical proof to prove that a Vaishnava Temple stood at the site until it was replaced with the disputed structure whereas the Babri Masjid Action Committee could only muster a pile of newspaper clippings, articles and extracts from the books written by partisan writers giving contrary view but they produced no evidence in support of such view. The learned author has referred to the policy of the Britishers, being pursued by the Congress, of divide and rule in keeping the issues alive so that the tension may always remain built up between the two major communities. He has termed the case set up by the Muslim leaders, particularly Syed Shahbuddin as totally improbable theoretical impossible and without any coherence. Then he has referred to the historical facts with regard to the construction of the disputed structure.

He has also referred to the recent book written by Mr. Jagmohan titled 'My Frozen Turbulence in Kashmir' in support of his contention that there has been followed policy of appeasement which has led to the present troubles in Kashmir making the position very difficult for the country.

Mr. Marwaha has cited State of Punjab Vs. Sukhpal Singh, A I R. 1990 Supreme Court 231 which is also a case of detention under the National Security Act of 1980. It has been held in this judgment that one of the foremost and fundamental rights granted in the Constitution is personal liberty and one cannot be deprived of it except by the procedure established by the law. It is held that when a certain procedure is prescribed by the Constitution or laws for depriving a citizen of his personal liberty, it is Court's duty to see that the procedure is strictly followed. So, he has aurgued that in the present case, it is not proved by the Central Government as to whether any relevant material had been considered by the Cabinet Committee on Political Affairs for forming its opinion for declaring the three associations as unlawful, hence the conditions laid down in the Act are not met.

Lastly, he has contended that Shri Vinay Kativar, the main person concerned for defending the Bajrang Dal, was detained in U.P. and despite orders of this Tribunal to make him available in Delhi for instructing the counsel in these proceedings, he was not made available for a long period and that has the effect of depriving the Bajrang Dal to properly defend the present case and thus, on this score alone, the Tribunal should quash the ban imposed on the Bajrang Dal. He has also urged that ban is politically motivated and is malafide. He has emphasised that no witness

has been produced who could have heard the voice of Sh. Katiyar and the speeches imputed to Mr. Katiyar have not been proved. So, he has prayed that the Tribunal should cancel the ban issued against the Bajrang Dal.

Mr. L R. Gupta, Senior counsel representing V.H.P., has in his opening arguments elaborated the preliminary objections to the validity of the notifications issued and had also dwelled upon the scope of the enquiry being held by this Tribunal and has also laid stress on certain provisions of the Act to point out that the notifications are not even covered by the provisions of the Act.

He has drawn my attention to Section 2(g)(ii) which is the only provision relied upon by the Central Government for declaring the associations in question an unlawful. He has argued that the very section shows that only the association which has for its object any activity which is punishable under Section 153-A of the Indian Penal Code or association which encourages or aids persons to undertake any such activity i.e. which is punishable under the said Section and the association of which members undertake any such activity covered by the provisions of Section 153-A and only such an association can be declared unlawful. He has argued that admittedly the Constitution of the V.H.P. clearly shows that it had no such activity which is punishable under Section 153-A. He has pointed out that unless such an object is enshrined in the Constitution of the V.H.P. the question of holding that the association had any such object which is punishable under the said Section does not arise. In other words, he has stressed that such an object must be the original object of the association not any object which come into existence without carrying out any amendment of the Constitution of such an association. V.H.P. is stated to be a society registered under the Registration of Societies Act and the said Act provides for necessary procedure by which the objects of the Society could be amended, added, changed or deleted and it is not the case of the Central Government urged by learned counsel that any such amendment had taken place in the Constitution of the V.H.P.

Giving the history of the Ram Janm Bhoomi Movement, he has stressed that this movement is in existence since 19th century as admitted by PW-7 and V.H.P. which had been in existence since long, had not participated in any such movement till 1983 and it had been pursuing its laudable objects set forth in the Constitution of V.H.P. for many years. He has pointed out that V.H.P. joined this Ram Janm Bhoomi Movement only in the year 1983 as it felt that almost all Hindus have a belief that Lord Ram was born at the spot where disputed structure was located and the disputed structure had been brought into existence as a sign of victory by the Mughal ruler Baber in order to put the vanquished Hindus to shame for all times to come. He has urged that this Ram Janm Bhoomi movement by itself has not been termed as unlawful activity under the Act and the question of faith is not open to question by any auhorities under the Constitution of India. According to Mr. Gupta, this movement gained momentum in 1986 and by following the legal process under the orders of the District Judge, the locks which had been illegally put on the gate of the disputed structure were removed and unnecessarily and unfortunately removal of such lock from the disputed structure which for all material times since many many years had never been used as a mosque and was rather being used as a temple still certain elements of muslims came forward to resist this Ram Janm Bhoomi movement and they constituted All India Babri Masjid Action Committee and thereafter All India Babri Masjid Co-ordinate Committee. He has urged that at no point of time V.H.P. had any movement against the muslims as such and had not at any time propogated anti-pathy towards muslims and had not made any statements against the muslim religion, so the question of this movement giving rise to any disharmony among the muslims and hindus and encouraging any feelings of hatred or ill-will among the said two communities never arose.

He has urged that in 1989, in agreement with the Central and State Government, Shila Pujan processions throughout the country were taken out peacefully with no adverse reaction of any other community and Shilanyas Ceremony was performed in the undisputed land and the object of constructing a temple of Lord Ram at that place was the main object of Ram Janm Bhoomi Movement which again cannot be termed as illegal object or an object which could bring it in within any provisions of Section 153-A of the Indian Penal Code. He has also pointed out that the Kar Sewa ceremonies which took place in the year 1990 and in July 1992 were again peaceful and at no point of time any order of the Court was violated and assuming for the sake of arguments that the construction of a platform, while performing the Kar Sewa, is termed as violation of any court order, even then the provisions of Section 153-A of the Indian Penal Code are not attracted.

He has urged that the Kar Sewa which was to take place on December 6, 1992 was to be symbolic and it has been so given out in advertisements taken out in the newspapers and also announced on the Television and Radio as per the directions of the Hon'ble Supreme Court and V.H.P. had no plan or object of disobeying such orders of the Supreme Court and had desired to have only symbolic Kar Sewa and not to carry out any construction on the disputed land or to damage or demolish the disputed structure and thus, it cannot be said that V.H.P. had violated any provisions of Section 153-A of the Indian Penal Code. He has argued that V.H.P. had called the Kar Sewaks for only carrying out symbolic Kar Sewa and it is unfortunate that some of the kar sewaks being disgusted with the attitude of the Government and also delay taking place in the judicial proceedings with regard to the validity or invalidity of the notification issued by the U.P. Government in acquiring 2.77 acres of land and feeling exasperated, the said kar sewaks, in a spontaneous and sudden movement, defying the other kar sewaks, who had put up a cordon for protecting the disputed structure, had broken the said cordon and managed to demolish the disputed structure. He has argued that even if there was any

lapse of the U.P. Government in not taking strong arm measures in thwarting such efforts of a few persons in demolishing the disputed structure, no blame could be brought home to the V.H.P. on this score.

He has argued that even assuming for the sake of arguments that some followers of V.H.P. in defiance of the leadership of V.H.P. had participated in demolishing the disputed structure, still it cannot be said that V.H.P. had any such object or had abetted or encouraged or aided such followers of V.H.P. in participating in demolishing the said disputed structure. He has argued that as an after math of the demolition of the disputed structure, there had occurred wide spread violence perperated by fanatic Muslims and that would not again lead to any inference that V.H.P. was instrumental is causing disharmony or hatred or ill-will among the two communities.

He has argued that while issuing the notification declaring any association unlawful under Section 3(1), the notification must specify the grounds on which it is issued, as required by Section 3(2) of the Act. Referring to Blacks Law Dictionary, sixth edition page 1399 where word specify has been defined to mean "to mention specifically; to state in full and explicit terms; to tell or state precisely or in detail; to particularise". He has urged that in the present case the notification does not specify the grounds keeping in view the meaning of the word specify mentioned above.

He has interpreted Section 3(2) the words "such other particulars as the Central Government may consider necessary" to mean that particulars must be given in the notification itself and Central Government may withold some of the particular according to its discretion but if no particulars are given in the notification, the notification itself becomes nonest. Referring to the proviso appearing in that Section where it is recorded that the Central Government is not required to disclose any fact which it consider; to be against the public interest to disclose, he has urged that other facts which the Central Government does not consider to be confidential to be kept back in public interest must also be disclosed in the notification.

He has referred to Section 8 of The Maintenance of Internal Security Act 1971 where also a detenu has to be furnished the grounds of his detention and he has cited Vakil Singh Vs. State of Jammu & Kashmir, A.I.R. 1974 Supreme Court 2337 where the Supreme Court has held that the grounds within the contemplation of Section 8(1) mean materials on which the order of detention is primarily based and apart from the conclusion of facts, the grounds have a factual constituent also and they must contain the pith and substance of primary facts but not subsidiary facts or evidential details.

He has also cited Shalini Soni Vs. Union of India, A.I.R. 1981 Supreme Court 431 where the word grounds appearing in Article 22(5) of the Constitution came up for consideration and it was held that the grounds do not mean mere factual inference but mean factual inference plus factual material which led to such factual inferences and they must be self-sufficient and self-explanatory and the documents to which reference is made in the grounds also must be supplied to the detenu as part of the grounds and where the statute requires communication of the grounds, the same should be deemed to pertain to pertinent and proximate matters and should comprise of all the constituent facts and material. Again the words used are that detenu must be communicated the whole of the factual material considered by the detaining auhority and not merely the inference of fact arrived at by the detaining authority.

He has also cited Wasi Uddin Ahmed Vs. District Magistrate, A.I.R. 1981 Supreme Court 2166 which even requires the detaining authority to supply even the documents relied upon alongwith the grounds. It has been held in this judgment that under Article 22(5), there are two imperatives, firstly the detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention, communicate to the detenu the grounds on which the order of detention has been made and secondly the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. So, emphasis was laid that furnishing of grounds would require furnishing of documents in the language known to the detenu to enable him to make an effective representation.

He has also sought support from Ajit Kumar Kaviraj Vs. District Magistrate, A.I.R. 1974 Supreme Court 1917 where also it was laid down that it is absolutely necessary to indicate the grounds of detention to the detenu in clear and unambiguous terms giving as much particulars as will facilitate making of an effective representation He has argued that the ban under the Act effects vital fundamental rights of not only the associations but also of large number of followers and members of the association and procedural law must be strictly complied with before any such ban is imposed.

Referring to Section 3(3) of the Act, he has pointed out that no such notification shall have effect until the Tribunal, by an order made under Section 4, confirms the declaration made in such notification. Reference is made to the Blacks Law Dictionary page 298 where the word confirm is defined to mean "to complete or establish that which was imperfect or uncertain; to ratify what has been done without authority or insufficiently to make confirm or certain; to give new assurance of truth or certainty; to put aside past doubt; to give approval". He has urged that question of giving approval to a notiffication, which on the face of it is invalid, would not arise.

Referring to Section 4 of the Act which empowers the Tribunal constituted under the Act for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful, he has urged that the role of Tribunal is judicial in nature and adjudication has to be done by the Tribunal both on facts and law and there is no such role assigned to the Tribunal to examine administratively the position of public order keeping in view the facts and circumstances brought before the Tribunal in evidence.

Referring to Rule 3 of the statutory rules framed under Section 21 of the Act, he has pointed out that while holding an enquiry the Tribunal shall subject to the provisions of sub rule (2) follows as far as practicable the rules of evidence laid down in the Indian Evidence Act. So, he has urged that it is only when Tribunal finds some of the provisions of Indian Evidence Act not practicable to be followed in view of the paucity of time at the disposal of the Tribunal, only then the rules of Evidence Act can be overlooked and such rules of Evidence Act which can be followed practicable are not to be ignored at mere askance of the Central Government.

He has referred to the meaning of the word "practicable" from the 'Words & Phrases' Volume 33 page 248 which lays down that practicable means practicable to Court and not to the parties and it also means capable of being put into practice or accomplished or capable of being performed or effected and it largely depends on the context but ordinarily means that it may be practised or performed or capable of being put into practice done or accomplised and it also means feasible, capable of being put into useful practice and practical suitability in relation to the existing conditions that may be properly defined as feasible or in other words possible for accomplishment. So, he has urged that apart from the order made by the Tribunal, admitting in evidence without mode of proof, the newspapers, magazines, books and booklets, the Tribunal has to comply with the rigours of Evidence Act to see whether the other documents produced by the Central Government have been duly proved or not and particular emphasis is made with regard to the audio casseties and video cassettes produced in this matter.

He has cited Karan Singh Vs. Transport Commissioner, A.I.R. 1965 Jammu & Kashmir, 53 where the words 'reasonably practicable used in proviso (b) to Section 126 of the Constitution of Jammu Kashmir came up for consideration. Under Section 162(2) of the said Constitution, an employee could be discharged without giving an opportunity to show-cause against the proposed order taking resort to the said provision that it was not reasonably practicale to give any such notice. It was held that said provision contemplated a contingency where a delinquent is not available where it is not possible or feasible to give notice to him and where it was found reasonably practicable to allow the employee to defend himself at the first stage of the enquiry, it would be serious contradiction in terms to hold that it was not reasonably practicable to give him the same opportunity at the second stage i.e. when a tentative opinion with regard to the punishment to be inflicted has been formed.

The words "reasonably practicable" also came up for interpretation in State of Orissa Vs. P. Krishnaswami Murty, A.I.R. 1964 Orissa 29. It was held in this judgment that it is only for special and sufficient reasons to be recorded in writing, the disciplinary authority has to come to the conclusion whether it is reasonably practicable or not for effecting service of notice on the delinquent public servant.

He has also tried to show that the judgment given in Barium Chemicals Ltd. (supra) relied upon by the Central Government counsel, does not in any manner advance the case of the Central Government with regard to the material which should be available to the Central Government for forming the opinion for declaring the particular association as unlawful. He has pointed out that under Section 237(b) of the Companies Act 1956, there must exist circumstances suggesting certain acts of misfeasance or misconduct or fraud at the hands of the company or its Managing Agent or Directors and an action not based on circumstances suggesting any inference of the enumerated kind will not be followed. It was held by the Supreme Court that in other words, the enumeration of the inference which may be drawn from the circumstances postulates the absence of a general discretion to go on a vitious expedition to find evidence and no doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference is a sine qua non for the action must be demonstrable. It was emphasised that it is not reasonably to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist. It was laid down that since existence of circumstances is a condition fundamental to the making of an opinion, the existence of circumstances, in question has to be proved at least prima facie, So he has argued that it was incumbent upon the Central Government to have placed evidence on the record to show that the relevant material and evidence existed and was placed before the Central Government before it formed the opinion to declare these associations as unlawful.

He has referred to K. K. Sarin Vs. Smt. Meenakshi Datta Ghosh, 1978(i) I.L.R. (Delhi) 178 wherein the order of detention was quashed solely for the reason that the grounds of detention were not formulated by the detaining authority but were formulated by someone else and were communicated mechanically without application of mind and further also the grounds lacked in material particulars. It was held that it is the mandate of the Constitution in Article 22(5) of the Constitution that material particulars must be disclosed in the grounds.

A number of judgments have been cited by learned counsel for V H P. which are on the subject of law of detention where principles have been laid down that the order of detention is to be held illegal if it is passed on vague grounds or it has not taken into consideration the relevant material or it is based on material which was not relevant at all. For this purpose, he has referred to Ram Manohar Lohia Vs. State of Bihar A.I.R. 1966 Supreme Court 740, P. Mukherjee Vs State of West Bengal, A.I.R. 1970 Supreme Court 852, Ajit Kumar Vs. District Magistrate (supra), D.S. Aggarwal Vs. Police Commissioner, A.I.R. 1989 Supreme Court 1282 and Mohd. Dhanna Ali Khan Vs. State of West Bengal, A.I.R 1976 Supreme Court 734.

He has also argued that discretion which is conferred on the Central Government under the Act

has to be exercised by the Central Government without any bias and without any malafide and not under the pressure of any person and for this purpose, he has referred to the observations of learned author Dr. De Smith in his book 'Judicial Review of Demonstrative Act' which had been quoted with approval by the Supreme Court in State of U.P. Vs. Maharaja Dharmender Prasad Singh, J. T. 1989 (1) Supreme Court 118 in para 55 which are to the following effect :

> " The relevant principles formulated by the courts may be broadly summarised as follows: The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it : it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alient to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories. Failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive."

The Supreme Court has held that it is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi judicial complexion and that in exercising of the former power, the authority must bring an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. It was held that the authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion and it would then not be the authority's discretion that is exercised but someone else's.

He has argued that it has been clearly pleaded in the reply by the V. H. P. that the ban had been imposed by the Central Government at the behest of and under the pressure of political parties and certain sections of the ruling party opposed to B. J. P. and its sympathisers R. S. S., V. H. P. and Bajrang Dal and in the rejoinder, the Central Government had not disputed these facts and thus, there is implied admission made by the Central Government in this regard and thus the opinion formed by the Central Government is totally vitiated on such an account and it is abuse of the power and a malafide act on the part of the Central Government in declaring these associations as unlawful.

He has referred to Abdul Hamid Vs. Nur Mohd., A. I. R. 1976 Delhi 328 where the learned Judge was considering the effect of non-traverse in the written statement of the pleas taken in the petition and it was held that if certain facts mentioned in the petition are not controverted specifically, then same are to be deemed to be admitted. In the said case, in the written statement of the tenant, plea was taken that landlord who sought eviction on the ground of bonafide requirement had been letting out residential premises including House No. 1056. In the replication, no specific denial was made in respect of House No. 1056 and no plea was taken that house was not let out and that the same was not residential. The learned Judge held that non-traverse of such a fact in the replication would amount to admission.

Adverting to the scope of the enquiry which is contemplated to be held by the Tribunal under the Act in order to find out that there is sufficient cause or not for declaring a particular association as unlawful, Mr. L. R. Gupta has argued that the Tribunal has only to see that there existed sufficient cause or not at the time the Central Government formed the opinion for declaring these associations as unlawful. He has argued that only the material and evidence which were placed before the Central Government for forming the opinion regarding the existence of sufficient cause can be looked into by Tribunal for adjudication of such a matter and not any other evidence and material which had not been placed before the Central Government and which had not been even referred to in the notification or in the resume. He has also argued that the resume could not be at all field for setting up ony other grounds, practiculars and facts which had not been disclosed in the notifications.

He has referred to the meaning of the words "sufficient cause" appearing in the 'Words & Phrases' Volume 40A at page 120 where it is laid down that the said phrase laid down in a statute providing that defendant shall be held to answer if it appears from preliminary examination that public offence has been committed and there is sufficient cause to believe defendant guilty thereof means such state of facts that would lead a man of ordinary caution or prudence to believe and conscientiously entertain strong suspicion to accused's guilt. The term 'sufficient cause' is said to be synonymous with the term 'good cause'.

He has cited Benarsi Das Vs. D. D. Cement Ltd., A. I. R. 1959 Punjab 232 where the word 'sufficient cause' appearing in Section 155 of the Companies Act 1956 came up for consideration. It was held that the said expression implies the presence of legal and adequate reason and it embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from a reasonable standard of practical and cautious men.

He has referred to Order 9 Rule 9 and Order 9 Rule 13 of Code of Civil Procedure where also the words 'sufficient cause' appear and has argued that these provisions require showing of a sufficient cause for non-appearing on the date fixed in the Court for one reason or another and he has argued that it has to be sufficient cause at the time the order was made and not any sufficient cause which may arise subsequent to the passing of the order. He has also contended that if one of the grounds mentioned in the notification is found to be not valid the notification must be cancelled even though any other ground mentioned in the notification may be substantiated and he has drawn analogy from the cases decided under the unamended detention laws

Sh I R. Gupta has also advanced the argument that unless and until it is shown that the main and the predominant object of a particular association is unlawful, there is no jurisdiction vested in the Central Government to declare an association as unlawful if its major and predominant objects are laudable and not unlawful in any manner. He has referred to Administration Law by Wade 1977 Edition pages 330 to 44 wherein elaborate principles have been discussed with regard to exercise of the discretion which are on the lines as laid down by D Smith in his book referred above.

He has also argued that it is not shown and proved that notifications have been issued by any competent person on behalf of the Central Government Notifications have been signed by PW18 Shri Srivastava, Joint Secretary in the Ministry of Home Affairs. He has argued that under Section 3(8) of the General Clauses Act, the Central Government means the President of India and under Article 53 of the Constitution of India, the President has to make the orders in administrative and executive fields and under Articles 74 & 77 of the Constitution of India it is not shown that under the rules framed for transaction of business and for allocation of business any authority has been vested in the Committee of Cabinet on political affairs or in the Ministry of Home Affairs for issuing any such notification under the Act. He has referred to Samsher Singh Vs State of Punjab & Anr , AIR 1974 SC 2192 in support of his contention.

He has argued that in evidence it is not shown that the notification was at any time put up before he Home Minister or before the said Committee of the Cabinet and rather it is admitted by Sh. Srivastava that he prepared the draft notification and getting it vetted from the Law Secretary he issued the notification under his own signatures So, he has argued that the notification has not been issued by any competent person.

He has also argued that it was a political abuse of the power as announcement had been made on December 7, 1992, for imposing a ban on communal organizations and only follow up action was taken for implementation of the decision already taken and thus, there was no independent exercise of the discretion by the Central Government and no consideration of the material and evidence by the Central Government in forming the opinion He has referred to page 9 of the White Paper issued by the Central Government which gives out that decision to impose the ban was taken on December 7, 1992. He has argued that statements of Shri N. C. Padhi PW7 and Shri Srivastava PW18 clearly show that after the decision had been communicated to them they were asked to complete the formalities and within one hour Sh. Padhi made available the material and within another hour the note was prepared by PW18 and note longwith the annexuures was sent to the Secretary (Home) He has argued that it is admitted by these witnesses that the material was huge and which could fill a room of the size of this court room and it was next to impossible for even more efficient person to go through such material and select the relevant material in one hour as is stated to have been done by PW7 and PW18 He has argued that it was only mechanical exercise of discretion and in fact, there was no material made available to the Cabinet Committee on the basis of which it could form any honest opinion for declaring these associations as unlawful. He has also argued that there is no evidence that either the Home Minister or the said Cabinet Committee had considered any relevant material for forming the opinion He has also argued that non-production of the note and the annexures before this Tribunal should lead this Tribunal to draw an adverse inference that if produced they would have shown that no material had been considered by the Central Government in forming the opinion and in fact, no decision had been taken by the Cabinet Committee on Political Affairs on any material.

Again referring to cases decided under the detention laws he has argued that the person who had formed the opinion ought to have appeared in the witness box or his affidavit ought to have been filed. He has cited Shaik Hanif & Ors Vs State of West Bengal, AIR 1974 SC 679 where an affidavit was not filed by the District Magistrate who had passed the detention order under Section 3 of the Maintenance of Internal Security Act, 1971, the Supreme Court held that the failure to furnish the counter-affidavit of the Magistrate, who passed the order of detention, is an impropriety It was held that in most cases it may not be of much consequence but in a few cases, for instance, where malafides or extraneous considerations are attributed to the Magistrate or the detaining authority, it may, taken in conjunction with other circumstances, assume the shape of a serious infirmity leading the court to declare the detention illegal.

He has argued that in the present case also it is the allegation of the respondents that extraneous considerations and pressures had weighed with the Ruling Party in the Central Government and the Central Government had imposed the ban in a malafide manner and it was a politically motivated ban and in such allegations only one of the Cabinet Ministers who was party to the formation of the opinion should have appeared in the witness box to rebut such allegations and in absence of such evidence, inference should be drawn in favour of the respondents on this point

He has also argued that onus is heavy on the Central Government to justify the imposition of ban by leading cogent and convincing evidence before the Tribunal He has referred to Mohd Faruk Vs State of Madhya Pradesh & Ors , AIR 1970 SC 93 In the said case a notification was issued which had the

effect of prohibition of slaughter of bulls and bullocks within the Municipality of Jabalpur. The question which arose for consideration was whether the same infringes the fundamental right guaranteed by Article 19(1)(g) and whether it amounts to placing reasonable restrictions in the interest of general public and the question whether less drastic restriction will not ensure the interest of the general public, came up for consideration. The Supreme Court held that when the exercise of a fundamental right is prohibited the burden of proving that a total ban on the exercise of the right alone may ensure the maintenance of general public interest lies heavily upon the State.

So, it is argued that these notification have imposed total ban on the exercise of fundamental rights of these associations and their members and thus, heavy onus lies on the Central Government to justify the imposition of such total ban. While referring to Myers Vs Director of Public Prosecutions, (1964) Ch. D 881 and R v. Patel, (1981) 3 All ER 94, Sh. Gupta has argued that IB reports exhibited in this case are totally inadmissible in evidence as the persons who had made such reports have not been examined. He has also referred to various Sections of the Indian Evidence Act in support of his contention that documents particularly the video cassettes, audio cassettes, leaflets, have not been proved in accordance with the provisions of the Evidence Act. He has also argued that no application had been moved at any time under Order XIII Rule 2 of the Code of Civil Procedure for producing any documents not relied upon or referred to earlier and all docoments in power and possession of the Central Government were not filed with the Resume as required by Order VII Rule 14 and thus documents which have been produced later on without any application by the Central Government should not be be taken into consideration

Now coming to the ground No. 1 given in the notification which refers to statement of V. H. Dalmia, he has argued that in fact, no such statement had been made by Sh. V. H. Dalmia and he has referred to mark C document which is an IB report where it is mentioned that such declaration was made on November 9, 1992, whereas in the notification it is mentioned that such statement was made on November 8, 1992. He has argued that this evidence in shape of mark C is hearsay evidence and this report has not been proved by the person who made the report and that no particulars and details have been given in the notification or in the Resume as to where such meeting took place where such a statement had been made by Sh. Dalmia. He has referred to the statement of Sh. Dalmia where he has denied of having made any such statement and he has also stated that after the talks could not take place in the meeting with leaders of AIBMAC on November 8, 1992, the office bearers came back to their office and no such statement was made by Sh. Dalmia in that informal meeting of the office bearers at the office of the VHP. Sh. Gupta has mentioned that similar statement has been made by Shri Ashok Singhal.

He has referred to the White Paper issued by the Central Government wherein again it is mentioned that the statement was made on November 9, 1992, which is not the case set up in the notification. He has also argued that the testimony of Sh. Ashok Singhal that only four persons were present in that meeting and no other person could possibly come in that room is credible as Sh. Ashok Singhal was having security provided to him by the Government and it was not possible for any other person to be present in that meeting. So, he has argued that it is not proved by the Central Government that any such statement had been made by Sh. Dalmia. He has also argued that even otherwise the contents of the statement do not come within the purview of the ingredients of offence punishable under Section 153A of the Indian Penal Code.

Sh Gupta has relied on Madholal Singhu Vs. Asian Assurance Co. Ltd., AIR 1954 Bombay 305, wherein it is laid down that where the correctness of the contents of a document produced in court is in issue, that should be proved by calling the executor of the document as a witness and it is not enough to merely prove the signature or the hand-writing of the person who is the only person who can depose to the correctness of the contents of the documents. Similar view has been laid down by a Division Bench of the Bombay High Court in Sir Mohammed Yusuf & Anr. Vs. D and Anr., AIR 1968 Bombay 112.

He has referred to the judgment given in the case of Gopal Vinayak Godse (supra). While considering the order of forfeiture passed in respect of a particular book under Section 99A of the Code of Criminal Procedure, it was held by a Special Bench that if forfeiture order could be sustainable only if ingredients of the offence punishable under Section 153A of the Indian Penal Code are to be satisfied. So, it is urged that unless it is shown that ingredients of the said offence are satisfied on the basis of the grounds mentioned in the notification, the notification imposing the ban is not liable to be confirmed.

Then referring to the second ground mentioned in the notification with regard to the speech of Sh. Ashok Singhal delivered on November 14, 1992, he has referred to the White Paper of the Central Government where no such speech is alluded to and he has argued that mark D document has not been properly proved which refers to contents of such a speech. Referring to the other speeches mentioned in the Resume particularly in Ex P74 and PW18|R4, he has argued that there is distortion in the reporting and the testimony of Sh. Ashok Singhal makes it evident that at no point of time he made any such speech which should be termed as inflammatory and which could have any tendency to arouse any feelings of disharmony between the two communities or bring about any ill-will or enmity between the two communities. He has argued that the audio cassette, being relied upon of which transcription is Ex. PW7|6, has not been proved to contain the speech of Sh. Ashok Singhal and moreover, the same is also beyond the scope of inquiry inasmuch as same is not referred to in the notification. At any rate, he has also argued that such speeches do not come within the purview of provisions of Section 153A of the Indian Penal Code.

Referring to the speech of Rajmata Vijaya Raje Scindia mentioned in the notification, it has been argued

that there is a contradiction between the contents of the speech mentioned in the notification and that the contents mentioned in the Resume para 13; whereas in the notification it is mentioned that she had stated that the disputed structure had to be demolished at all costs whereas in the Resume she is stated to have mentioned that the disputed structure has to be re-locate and even in the White Paper of the Government same position has been mentioned. He has argued that mark 'E' IB report has not been proved for the reason already given by him and the newspaper P73 does not give the correct version of the speech and testimony of Rajmata is quite straightforward when she has stated that she could never think of making any statement that the disputed structure be demolished and she also made clear that for respecting the sentiments of others VHP had agreed for re-locating the disputed structure He has also argued that even if contents of the speech as mentioned in the notification are said to be proved even then the same do not fall within the scope of Section 153A.

He has asserted that the testimony of Rajmata that the question of faith of the Hindus that Lord Ram appeared in human form at the disputed site and that Lord Ram Temple must be constructed are beyond the purview of the courts and he has argued that having such a faith cannot be considered to satisfy any of the ingredients of the offence punishable under Section 153A.

Sh. Gupta has vehemently argued that the stand of the VHP and other banned parties has been to settle this dispute amicably and they were making attempt after attempt to convince the Central Government to persuade the Muslim leaders to agree to the re-location of the disputed structure at a distance inasmuch as Muslims have no such deep rooted faith in the said disputed structure which had not been used for offering prayers by the Muslims since long time and at one point of time they had also suggested for reference of such dispute to the Supreme Court for its opinion under Article 143 of the Constitution but due to stubborn attitude adopted by the leaders of the AIMMAC the Government did not even agree to this reasonable suggestion and had given totally impractical suggestion that reference be made to the Supreme Court under Article 138 of the Constitution He has argued that resort to Article 138 was not practicable as VHP was not party to the pending suits which were being fought by some individuals pertaining to the disputed structure. He has argued that if reference had been made to the Supreme Court under Article 143 prior to December 6, 1992, the things would not have gone out of hand but it is due to prevaricating attitude of the Central Government and also its deep-rooted policy of appeasement of Muslims in order to have them as their vote banks, this reasonable suggestion of the respondents was not given any importance which led to feelings of frustration in the minds of some of the Kar Sewaks who as a spontaneous act proceeded to demolish the disputed structure He has argued that it is not understandable why now after demolition of the disputed structure the Central Government had thought it fit to have the opinion of the Supreme Court under Article 143 of the Constitution.

He has vehemently argued that assertion of religious belief or propagation of Hindu religion by the respondents by no stretch of reasoning could be termed as illegal or punishable under the provisions of Section 153A. He has argued that even if certain elements in the Muslim community due to their misguided notions objected to such belief of the Hindus that would not mean that the respondents who have been propagating their belief are causing any disharmony or illwill or enmity between the two communities. Sh. Gupta has gone to the extent of arguing that Muslims had been obstinate and obdurant in not respecting the sentiments of the majority community in respect of their faith about the disputed structure. He has also argued that no law can restrict such a feeling and in pursuance to such a faith which cannot remain only illusory the respondents were within their rights even to demolish the disputed structure and construct Lord Ram Temple in fulfilment of their religious faith. He has argued that Muslims have adopted a policy of opposing the Hindu majority in respect of their reasonable aspirations at any cost even though Muslims do not gain anything and have been also opposing the reference made to the Supreme Court under Article 143 of the Constitution.

He has argued that there was only very thin population of Muslims living in Ayodhya and there were already present eight mosques in Ayodhya where they have been offering their prayers and still leaders of AIBMAC had unnecessarily opposed the Ram Janam Bhoomi Movement. He has also pointed out that there are 25 mosques available in small town of Faizabad. He has urged that Muslims have not treated the disputed structure at any time sacrosant inasmuch as for long period they had reconciled to the accomplished fact of not treating that disputed structure as a functional mosque.

He has also cited United States of America Vs Edna W. Ballard and Donald Ballard, 88 Law Ed. 1148. In this judgment of the Supreme Court of USA the first constitutional amendment came up for consideration and it was held that the first amendment has a dual aspect. It not only "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship but also "safeguards the free exercise of the chosen form of religion." Thus, the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. It was held that freedom of thought which includes freedom of religious belief, is basic in a society of free men. It embraces the right to maintain theories of life and of death and of the hereafter which are rank hearsay to followers of the orthodox faiths. It was held that hearsay trials are foreign to the Constitution and men may believe what they cannot prove and they may not be put to the proof of their religious doctrines or beliefs and religions experiences which are as real as life to some may be incomprehensible to others and yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. It was further laid down that the miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many It was held that the man's relation to his God was made no concern of

the State. It was further held that religious views espoused by respondents might seem incredible, if not preposterous, to most people, but if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect and when the triers of fact undertake that task, hey enter a forbidden domain.

He has also referred to Robert Murdock Vs Commonwealth of Pennsylvania, 87 Law Ed. 1292. In this judgment it was held that the right to disseminate religious beliefs through the distribution of literature, under the constitutional guarantee of freedom of religion, is not to be denied merely because the literature is provocative or abusive, or because it attacks other religions. This judgment deals with a question of imposition of a license tax as a condition to the pursuit of religious activities by the petitioners in the area of particular corporation. It was held that considerable emphasis is placed on the kind of literature which petitioners were distributing—it is provocative, abusive and ill-mannered character and the assault which it makes on our established churches and the cherised faiths of many of us. It was held that these considerations are no justification for the license tax which the ordinance imposes. It was held that plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful and if that device were ever sanctioned, here would have been orged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favour and that would be a complete repudiation of the philosophy of the Bill of Rights. It was held that Jehova's Witnesses are not "above the law". It was emphasized that the present ordinance is not directed to the problems with which the police power of the State is free to deal and it does not cover, and petitioners are not charged with, breaches of the peace and they are pursuing their solicitations peacefully and quietly and the petitioners, moreover, are not charged with or prosecuted for the use of language which is obscene, abusive, or which incites retaliation Ultimately the court came to the conclusion that the ordinance is not narrowly drawn to prevent or control abuses or evils arising from that acivity, rather it sets aside the residential areas as a prohibited zone, entry of which is denied to the petitioners unless the tax is paid and that restraint and one which is city wide in scope are different only in degree and each is an abridgment of freedom of press and a restraint on the free exercise of religion and they stand or fall together.

Sh. Gupta has argued on the basis of these judgments that even though it may be held that the said leaflets and speeches and audio cassettes and video cassettes have been proved, still if they are termed as provocative to the Muslim community even then no ban could be imposed as they have a right to propagate their religion and faith and criticise religion and faith of others and no ban could be imposed.

He has also sought support from Ram Muneshwar Kumar Singh Vs. State of Bihar & Ors AIR 1976 Patna 198 This case pertains to a challenge to notification issued by the Government relaxing the restrictions In the grant of quarrying permit on the southern side of the Ramshilla Hill The petitioner who claimed to be Convenor of the Protection Board for Ancient and Sacred Hills, Ramshilla, Pretshilla, Brahmayoni and Barabar of Gaya (Bihar), filed a writ petition seeking quashment of the notification and on of difference of opinion between two Hon'ble Judes of Patna High Court, the matter came up for decision before a third Judge. It was held in this judgment that it has been well estabished by authoritative pronouncements of the Supreme Court that the Petitioner is not required to be put to the proof of the religious doctrines of beliefs of Hindu Public. Referring to Govindlalji Vs. State of Rajasthan, AIR 1963 SC 1638, where it was held that the freedom of religion under Article 25 of the Constitution includes not only freedom to believe in or profess any religion, but also freedom in regard to the religious particles, i.e. acts done in pursuance of religion, and a Court of Law has nothing to do with the soundness or unsoundness of a particular religious doctrine. It was held that men may believe what they cannot prove and religious experiences which are as real as life to some, may be incomprehensible to other, yet the fact that they may be beyond the keen of mortals does not mean that they can be made suspect before law.

So, he has argued that belief of the most of the Hindus as represented by the three associations that Lord Ram took human appearance at the disputed spot is beyond the purview of the courts and even the faith of the Hindus that Lord Ram's Temple be constructed at the spot is also beyond the purview of the courts.

He has also referred to Grace Marsh Vs. State of Alabama, 90 Law Ed. 265, which also lays down that the constitutional guarantees of the freedom of press and of religion preclude the enforcement against one who undertook to distribute religious literature on a street of a company-owned town, contrary to the wishes of the town's management, of a State statute making it a crime to enter or remain on the premises of another after having been warned not to do so.

He has also pointed out that the speech attributed to Acharya Giriraj Kishore in the notification is also not correct and mark F document again has not been proved and other speeches referred to in para 12 of the Resume imputed to Acharya Giriraj Kishore are again not correct version of his speeches and also beyond the scope of the inquiry as they do not find mention in the notification.

He has pointed out to the statement of Acharya Giriraj Kishore where he has deposed that VHP always wanted to achieve its goals including the liberation of Ram Janam Bhoomi peacefully. He has mentioned that newspaper Ex. P72 also does not depict the correct version of the speech made by Acharya Giriraj Kishore. In the alternate he has argued that the contents of the speeches made by Acharya Giriraj Kishore being relied upon by the Central Government do not bring them within the purview of Section 153A.

He has also argued that the allegations made in the notification that followers of VHP had participated in the demolition of the disputed structure are

vague as no particulars have been given. He has referred to the White Paper of the Government Ex. PW7 R12 which also, according to him, makes it clear that there was no plan of the VHP or of other two associations for demolishing the disputed structure and thus, the disputed structure came to be demolished by a group of persons despite efforts being made to stop them from doing so by the other Kar Sewaks and leaders.

He has argued that no suggestion has been given to the witnesses of VHP that the VHP had planned the destruction of the disputed structure. He has argued that Sadhvi Rithambra and Acharya Dharmendra have never been members of VHP. The speeches made by them even if they are treated to be objectionable and covered by the provisions of Section 153A would not be relevant for justifying the ban on VHP. He particularly pointed out that a particular audio cassette which was stated to contain speech of Sadhvi Rithambra also contains speeches of Muslims which are highly inflammatory and a particular cassette purporting to contain speech of Sh. Ashok Singhal did not contain any such speech and which show that the efforts had been made to fabricate the audio cassettes. He has referred to another cassette proved on the record Ex. PW23/1 which shows that the empty cassette was purchased in November 1992 but it purports to contain the speech of Sh. Ashok Singhal made on January 1992. He has argued that this is a clumsy effort made to show that in this cassette speech was recorded when it was made on 29th January 1992. He has also argued in the alternate that speeches contained in these cassettes do not satisfy the ingredients of offence punishable under Section 153A. It is also argued that the said speeches of Sadhvi Rithambra and Acharya Dharmendra are beyond the scope of this inquiry as they do not find mention in the notifications.

He has referred to the judgment of the Lahore High Court in Raj Paul Vs. Emperor, AIR 1927 Lahore 590. In this case a pamphlet which was scurrilous and offensive and had the effect of wounding the religious feelings of Mohammedan community and was undoubtedly malicious in tone came up for consideration before the Lahore High Court and it was held that the words used in the pamphlet about the founder of one religious creed might not come within the purview of Section 153A. It was held that Section 153A was intended to prevent persons from making attacks on a particular community as it exists at the present time and was not meant to stop polemics against deceased religious leaders however scurrilous and in bad taste such attacks might be.

He has also argued that the Tribunal has to stick to the reference made according to the Act and has no power to enlarge the scope of the reference and he has placed reliance on Natwarlal Shamaldas & Company Vs. The Minerals and Metals Trading Corporation of India Ltd. AIR 1982 Delhi 44, wherein in arbitration matter it was held by the court that the arbitrator cannot enlarge the scope of reference. To the similar effect is the law laid down by the Supreme Court in Orissa Mining Corporation Ltd. Vs. M/s. Prannath Vishwanath Rawlley, AIR 1977 SC 2014. He has also emphasized that the validity of the notification has to be judged on the grounds mentioned therein and on no other ground and he cited Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner & Ors., AIR 1978 SC 851, wherein it was laid down that the second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reason in the shape of affidavit or otherwise. So, it was emphasized that otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional-grounds later brought out.

He has referred to State of Bihar Vs. Ghulam Sarwar & Anr., AIR 1965 Patna 393, where it has been held that in order to ascertain the intention of the accused for offence under Section 153A the offending article or the pamphlet must be read as a whole and also circumstances attending the publication must be taken into account. Similar principle was laid down in Emperor Vs. Banomali Maharana, AIR 1943 Patna 382. He has also stated that in a democratic country criticism of the Government measures and administrative actions does not constitute an offence under Section 153 and he cited Debi Soren & Ors. Vs. State, AIR 1954 Patna 254. In this judgment also it was held that the speeches made must be considered as a whole and in a fair, free and liberal spirit, not dwelling too much upon isolated passages or upon a strong expression used here and there and in other words, an attempt should be made to gather the general effect of the speeches as a whole. Similar proposition was laid down in Vishambhar Dayal Tripathi Vs. Emperor, AIR 1941 Oudh 33.

Coming to the plea of the Central Government that there is an inter-linkage between the three associations, he has contended that separate notifications have been issued and in none of these notifications even any suggestion has been made regarding any such linkage. He has argued that VHP was founded not by RSS people but some renowned persons like Sh. K. M. Munshi, Muni Sushil Kumar, Master Tara Singh, Swami Chinmayanandji besides others and mere fact that some old Pracharaks of RSS, who had left activities of RSS, have also joined the VHP would not mean that there is any linkage between RSS and VHP. He has argued that VHP is an independent association registered under the Societies Registration Act and has its separate objects mentioned in it's constitution which has nothing to do with any other association like RSS. He has argued that mere fact that advice given by the leaders of RSS is followed by VHP sometime would not make it as a front organization of RSS. It is free to follow such advice or not to follow such advice. He has pointed out that Kendriya Marg Darshak Mandal which is composed of Sadhus and Saints of Hindus, though constituted by VHP, is an independent body which only gives advice to VHP and similarly Bajrang Dal is a separate organization. He has argued that advice of Saints and Rishis have been always followed in Indian tradition even by Kings who have even abdicated their thrones on such advice of such sainty people. So he has contended that as an after-thought in the Resume, finding that perhaps there was no evidence

or material available for banning RSS, this story of linkage has been put forward which is totally baseless and of no consequence.

He has also controverted the contention of the Central Government that this Tribunal is to act as Administrator-cum-Adjudicator and inasmuch the Tribunal has to look to the public interest as a question of public order is involved. He has argued that the Tribunal has to act as a judicial authority in order to see whether fundamental rights of the three associations have been curbed on lawful grounds. He has argued that no such role is assigned to the Tribunal to act as Administrator for protecting the public interest. He distinguished the two judgments cited by the Central Government Counsel in support of his contention regarding the role of the Tribunal. According to him, the House of Lords judgment given in Official Solicitor Vs. K. and Another, (1963) 3 All ER 191, does not approve the law laid down by the Chancery Division in (1962)3 All ER 1003 At any rate he has argued that the question arising for decision in those cases was with regard to the interest of the minor child, while no such question arises for decision before this Tribunal. The Central Government or public cannot be equated with infants. He has also argued that if public at large is involved in the present proceedings then the Tribunal should take resort to the provisions of Order I Rule 8 of the Code of Civil Procedure for requiring inferested public persons to come and join these proceedings.

Criticising the graph prepared by PW7 Shri Gupta pointed out that the incidents of communal violence which have been taken in the year 1989, 1990, 1991 and 1992 did not relate to the Ram Janam Bhoomi movement of the respondents. He has also argued that the news item appearing in the newspaper is of no value and he cited Samant N. Balakrishna etc. Vs. George Fernandez & Ors., AIR 1969 SC 1201, wherein it has been laid down that a news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence and it is well known that the reporters collect the information and pass it on to the editor who edits the news item and then publishes it and in this process the truth might get perverted or garbled and such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. It was emphasized that a fact has first to be alleged and proved and then newspaper reports can be taken in support of it but not independently.

Mr. Anand in his rejoinder arguments has dealt with the points raised by the learned counsel of all the three respondents and I would refer to such arguments while discussing various points arising for decision.

Before I deal with the issues arising for decision, I may deal with the question of scope of the enquiry to be held under the Act and the powers of the Tribunal viz-a-viz the evidence which could be taken into consideration for adjudicating whether or not there is sufficient cause for banning these associations.

This Act on the face of it has been brought on the Statute Book for putting reasonable restrictions, in the interest of preserving the sovereignity and integrity of this country, on the fundamental rights available to the citizens, as enshrined in Article 19(1)(a), freedom of speech and expression, (b) to assemble peaceable and without arms (c) to form associations or unions. Articles 19(2), 19(3) and 19(4) enable the Government for making any law for imposing reasonable restrictions inter alia in the interest of public order. The statements and objects and reasons for enacting this Statute have already been enumerated by me in earlier part of the order.

In 1972, there took place some amendment in the Act already noticed by me and statement of objects and reasons for curbing the drills, exercises and other similar activities organised by communal and other divisive forces which cause apprehension, fear or a sense of insecurity among members of the affected communities which also affect prejudicially the maintenance of tranquillity, and also the propoganda which imputed that the members of any particular community cannot be patriotic or assertions that members of any particular community should be denied or deprived of their rights as citizens of India, etc. again which are prejudicial to maintenance of communal harmony and to the integrity of the nation. Thus, the scope of the Act was widened to define unlawful associations in Section 2(g) of the Act.

The preamble of the Act shows that this Act seeks to provide for more effective prevention of certain unlawful activities of individuals and associations and for the matters connected therewith. The unlawful association was defined in clause (g). Clause (g) has two grounds (i) and (ii) and in this case only clause (ii) is applicable which says that any association which has for its object any activity which is punishable under Section 153-A of Indian Penal Code or Section 153-B of the Indian Penal Code or which encourages or aids persons to undertake any such activity or of which the members undertake any such activity is to be considered unlawful association.

It is evident from this clause that having an object of the nature mentioned therein makes a particular association as unlawful and it also makes it unlawful if the association encourages or aids persons to undertake any such activity mentioned therein and if members of such association undertake such activity. It is to be emphasised that it is not necessary that association must put the activity into practice before the association can be deemed to be unlawful. Mere having an object of any activity which is punishable under Section 153-A or 153-B of the Indian Penal Code makes the association unlawful.

Section 3 empowers the Central Government for declaring a particular association unlawful if in its opinion any association is or has become unlawful. It is evident that it is not necessary thatassociation to be declared unlawful by the Central Government under Section 3 must be unlawful from its very inception or constitution Association which may be lawful at the time it was formed and continued to be lawful for any period of time, still it can become unlawful association if it falls within heambit of sub-clause (ii) of clause (g) of Section 2 Such declaration is to be

made by the Government by issuing a notification to be published in the Official Gazette.

Such notification has to specify the grounds on which it is issued. Elaborate arguments have been addressed which have already been enumerated above with regard to the meaning of the words 'specify' and 'the grounds'. It is quite clear that such words appearing in a particular statute have to be interpreted in the context in which they are used. The meaning of the word 'specify', as given in Blacks Law Dictionary at page 1399 indicate for giving some details and the word 'the grounds' if no other indication is available from the Statute would mean supplying material and primary facts ordinarily.

In the present case, the grounds referred to in Section 3 must take its colour from Section 2(g)(i) or (ii). Section 153-A of Indian Penal Code pertains to offences with regard to the activities promoting enmity between different communities on ground of religion, language, place of birth, etc. which are prejudicial to maintenance of harmony. Clause (a) refers to offence being committed if a person by words, either spoken or written, or by signs or by feasible representations or otherwise, promotes or attempts to promote on the ground of religion, etc. disharmony or feelings of enmity, hatred or ill-will between different religious, etc. groups, castes or communities. Clause (b) refers to committing an Act which is prejudicial to the maintenance of harmony between different religions, etc. groups and which disturbs or is likely to disturb the public tranquillity.

Clause (c) refers to the activities like organising any exercise, movement or drill which trains the people to use criminal force or violence against any religion etc. groups or communities or causes or likely to cause fear or alarm or feeling of insecurity amongst members of such religious groups. Offences committed under this Act are punishable with imprisonment which may extend to three years, or with fine or with both.

It is to be also highlighted that Section 3(2) itself does not make it incumbent upon the Central Government to give particulars in the notification because it is made clear that Central Government may give such other particulars as it may consider necessary and proviso to that Section also makes it clear that Central Government shall not be required to disclose any fact which it considers against the public interest to disclose in the notification. There is a salutory reason for making this provision because if certain inflammatory, provocative and abusive words uttered against a particular religion are subject matter of issuing of a notification or declaration, the publication of the same in a notification in Official Gazette would be itself have adverse impact on the communal situation. It is for this reason the Legislature had intended to leave the discretion to the Central Government to give or not to give any other particulars as it may deem fit.

It is no doubt true that mere repeating the words of the Statute in the notification would not constitute the grounds. The Legislature intended that the notification should give indication with regard to the activities which come within the purview of the penal sections mentioned in the Act. The grounds could not be detailed one in very nature of the notification.

In order to understand what meaning should be assigned to the word 'the grounds' one must not loose sight of the context in which the said words appear and interpretation has to be given in keeping in view the other provisions of the statute and the statutory rules in order to understand what Legislature had in mind when it required specifying of the grounds in the notification. Rule 5 makes it clear that a reference made to the Tribunal has to be accompanied by not only a copy of the notification but also all the facts on which the grounds specified in the said notification are based. It is significant to mention that in Section 3(2), the Legislature had used the words 'the grounds' and 'such other particulars' and in the proviso had made it clear that Central Government was not required to disclose facts in the notification which it considers to be against public interest to be disclosed and Rule 5 further makes it clear that detailed facts have to be given to the Tribunal alongwith the reference.

So, the words 'the grounds', 'the particulars' and 'the facts' have been used and these three words have different connotations admittedly. If the Legislature intended that notification must incorporate not only the grounds but also the particulars and the facts, the Legislature would have made its mind clear by using all these words in Section 3(1) mentioning that notification shall specify the grounds, the particulars and the facts on the basis of which said grounds have been framed, but Legislature had intentionally not used such expressions. So, unless and until any comparable Statute is interpreted by the Courts, no benefit could be derived from any judgment which deals with the Statute which has different wording or different connotations in view.

Section 83 of the Representation of People Act 1951 is differently worded. It requires an election petition to disclose the primary or material facts in the election petition. The judgments cited on behalf of the respondents in cases of M/s Rural Asian Equipment & Chemicals (supra), S. N. Balkrishna (supra) and Udhav Singh (supra), dealt with the said different wording being used in that statute. The same interpretation cannot be given to the words appearing in the present statute which have different connotations in the context in which they have been used.

There is no dispute about the principle laid down by Maxwell in 'Interpretation of Statute' 12th Edition page 251 that the statute which encroaches on the rights of the subject whether as regards person or property are subject to strict construction in the same way as penal acts and it is a well recognised rule that they should be interpreted if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the individual should be adopted. However, question of giving any liberal interpretation in favour of the subject would arise only if there is any ambiguity in the use of the words in this statute. I do not see any such ambiguity because the Legislature had used the three important expressions in Section 3(2) and Rule 5 which make the mind of the Legislature quite clear.

The plain meaning of the word 'ground', as given in Blacks Law Dictionary, of course, has to be to some extent kept in view while interpreting the word 'the grounds' used in Section 3(2) of the Act. It is obvious and quite clear that bare reproduction of the language of clause (g)(ii) or the language of Section 153-A in the notifications would not suffice. Some primary facts which could constitute the grounds, as envisaged by the statute, must find mention in the notifications. The word 'specify' also gives clear indication towards the same. I, hence, hold that the grounds mentioned in the notification have not to be elaborate to include particulars and evidenciary facts but the notification must give some primary facts which would constitute the grounds on which the associations have been declared unlawful.

The contention of the learned counsel for respondents, that unless and until a particular association has an unlawful object menioned in its Constitution, the same cannot be declared unlawful is not convincing at all. Section 7 of the Act makes it very clear that a particular association can be declared unlawful if that association is or has become so. The words 'has become' are quite indicative of the mind of the Legislature. It may be that initially a particular association may not have any unlawful object which may come within the purview of the statute but subsequently it may have such an unlawful object which could bring this association within the four corners of the statute.

Another contention raised that unless and until a particulars association had predominantly unlawful object in view, such an association cannot be declared unlawful is also not sound. A particular association may have very laudable social objects and might have been carrying out vast activities in pursuance of said social objects but if such an association, later on, comes to adopt an object which very much threatens the integrity or unity of this country or threatens gravely the public order which may lead to all round chaos and disturb public tranquillity on a vast scale, it is not possible to countenance the contention that such an association could not be declared unlawful. Section 3 does not say that the association would be declared unlawful if it has a predominant object which is unlawful in its view.

Next question which arises for decision is as to what the words 'if the Central Government is of opinion' appearing in Section 3 would mean. Similar words appear in Section 237 of the Companies Act. While interpreting those words, the Supreme Court, in case of Barium Chemicals Ltd. (supra), has held that the formation of the opinion of the Central Government is a purely subjective process and there can also be no doubt that since the Legislature has provided for the opinion of the Government and not of the Court, such an opinion is not subject to challenge on the ground of propriety reasonableness or sufficiency. It was held that authority is required to arrive on such an opinion from the circumstances suggested in the said Section and if the circumstances at all do not exist, only then it can be said that there was no basis for formation of opinion by the Central Government but if no circumstances are shown to exist or it is shown that it was impossible for anyone to form an opinion from the circumstances shown to exist, then such an opinion can be challenged on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute.

It is to be kept in view that this Tribunal is a creature of the statute and it has to act within the four corners of the said statute. The references which have been made to this Tribunal require this Tribunal to adjudicate upon the notifications for purpose of deciding whether or not there is sufficient cause for declaring the association to be unlawful. This is the limited scope in which the Tribunal has to function. The Tribunal has not to examine the validity of the notification from any other angle. It may be if notification has not specified any grounds whatsoever, the Tribunal could then come to the conclusion that there is no sufficient cause for declaring the particular association as unlawful. The Tribunal is not functioning as a Court to examine the validity of the notifications which could be challenged on the grounds available to the interested parties by taking resort to the provisions of Article 226 of the Constitution.

It is also not possible to countenance the contention of the learned counsel for the Central Government that even if the grounds so set up in the notifications are not at all proved to show that there is sufficient cause for banning the associations in question, still the Central Government is within it's power to produce material and evidence before the Tribunal to substantiate some new grounds on the basis of which a particulars association could be declared unlawful. If there are any new grounds other than incorporated in the notifications which have become available, it is for the Central Government to form any opinion on the said grounds and it is not the function of the Tribunal to form any opinion on any such grounds which are not subject matter of the notifications referred to the Tribunal for adjudication. The reference is made to the Tribunal in respect of the impugned notifications and a Tribunal is legally bound to only adjudicate about the said three notifications and it definitely means that only the grounds mentioned in these notifications are to be adjudicated by this Tribunal.

It is significant to mention that by Criminal (Amendment) Act, 1972, Section 99A was added to the Criminal Procedure Code and Section 2(g)(i)(ii) were added to the present Act. Section 95 of the new Criminal Procedure Code is similarly worded as Section 99A of the old Criminal Procedure. Section 99A of the old Criminal Produce Code and Section 95 of the new Criminal Procedure Code entitle the Government to proscribe any book etc. which has the effect of causing disharmony, feeling of illwill, enmity and hatred amongst the communities. The Government has to in its order proscribing such books give grounds. In cases of Lalai Singh, Mohd. Khalid, Narain Dass (supra), such orders made under the aforesaid Sections came up for consideraion and it was laid down that power can be exercised for proscribing such books only in the manner and according to the procedure laid down by law and if no grounds are indicated in such orders, the High Court is bound

to set aside such orders in an appeal filed against such orders and the Government is not entitled to give any grounds which are not in the orders in support of such orders. There is no dispute about the principle enunciated these judgments. I have also held that the grounds which have been given in the notifications are the only grounds on the basis of which this Tribunal is to decide whether there is sufficient cause for declaring any of these associations as unlawful.

The next question to be decided is whether the Tribunal is under the law only required to take into consideration the material and evidence which was available to the Central Government for formation of its opinion or whether the Central Government is entitled in law to produce some more material and evidence before the Tribunal in support of the grounds already taken in the notifications.

It is significant to mention that the Tribunal is in law to decide whether or not there is sufficient cause for declaring an association as unlawful. The Legislative had not used the word, 'whether there was sufficient cause'. If the intention of the Legislature was that only the material and evidence which had been taken into consideration by the Central Government for forming opinion should only be seen and examined by the Tribunal, then Legislature would have used different wording like that the Tribunal is to decide whether there existed sufficient cause for declaring an association as unlawful by Central Government. The use of the present tense in the statute and also the power given to the Tribunal to call the Central Government or even the associations and their office bearers to furnish information which may be relevant to the enquiry also makes it evident that Tribunal's power is not circumscribed for deciding the issue only on the basis of material and evidence which was available to the Central Government for formation of its opinion.

The learned counsel for the respondents have sought support for their contentions from the judgment of the Supreme Court given in the case of A. K. Roy (supra). Section 11(2) of the National Security Act, 1980 requires that the report of the Advisory Board shall requires itself "as to whether or not there is sufficient cause for the detention of the person concerned". It has been held by the Supreme Court that the duty and function of the Advisory Board is to determine whether there was sufficient cause for detention of the person concerned on the date on which the order of detention was passed and also whether or not their is sufficient cause for the detention of that person on the date of its report. So, this judgment does not support the contention of the learned counsel for respondents that the only task of the Tribunal is to examine whether there was sufficient cause for declaring the association unlawful or not at the time the impugned notification was issued. Even this judgment lays down that upto the date of the report, the Advisory Board is to see whether or not there is sufficient cause for the detention of the person. So, on the same analogy, this Tribunal has to decide whether or not there is sufficient cause for declaring the said association unlawful upto the date of its report. Hence, it cannot be held that only the material and evidence which were available to the Central Government for formation of its opinion could be examined by the Tribunal and no other material or evidence could be looked into in support of the grounds mentioned in the notifications. I hold accordingly.

I find a lot of strength in the contention of the learned counsel for the Central Government that this Tribunal is not deciding the lis between the Central Government and the associations while adjudicating in this reference and for deciding whether or not there is sufficient cause for declaring the said associations as unlawful, it is self-evident from the purpose for which the statute has been framed that the restrictions are sought to be imposed on fundamental rights of the unlawful associations and on the unlawful activities of the citizens on the basis of the constitutional provisions which entitle the State to impose such restrictions inter-alia in the interest of public order. It is evident that public order involves the interest of the general public. It is because of the impact on the public order that the unlawful activities and unlawful associations are to be prevented from indulging in such unlawful activities which disturb the public tranquillity making the lives of the citizens of the country insecure

It is true that the Tribunal has to also judicially examine the question whether there exist cogent, convincing and reliable evidence and material or not for declaring the association in question as unlawful and in that role, the Tribunal decides the lis brought by the Central Government against the three associations but when the public interest is to kept in view, the Tribunal has to examine the impact of the activities of these associations which may be very adverse to the public interest.

In my view, Sh. Anand was right in drawing some support for this proposition from the two cases 1962(3) All England Reporter 178 and House of Lord's decision in 1963(3) All England Reporter 191. The contention of the learned counsel for respondents that House of Lords decision has not approved the principles laid down in the earlier decision appears to be not correct. I have persued said judgments find that it has been held been by the House of Lords that where the Judge sits as an arbitrator between the two parties, he should consider only what they put before him but if one or the other omits something material and suffers for the omission, he must blame himself and not the Judge and where Judge sits purely as an Arbitrator and relies on the parties for his information, the parties have the correlative right that he should act only on information which they had the opportunity of testing. It was further laid down that where the Judge is not sitting purely or even primirily as an Arbitrator but is charged with the paramount duty of protecting the interest of on, out-side the conflict, a rule that is designed for just arbitrament cannot in all circumstances prevail. These two cases involve the question of custody of a mentally retarded infant. The mother and father were fighting for the custody of the children. It was held that in such cases paramount interest of the infants is to be kept in view and it was held that Psychaterist's report pertaining to the said infants, if would have adverse effect on the welfare of the infants, need not be disclosed to the contesting parties.

It is true that the public interest cannot be equated with the paramount interest of the infants but some balance has to be kept in view while deciding the questions arising before the Tribunal for safeguarding the public interest It is evident that if public order is disturbed, the adverse impact is always on citizens of this country

However, it is not possible to agree with the contention of the learned counsel for the Central Government that this Tribunal is entitled to look at any material at the back of the respondents and give a decision solely based on such material. Mr Anan had, while concluding his arguments, handed over some confidential files containing more material and had urged that this Tribunal should take into consideration that material as well for deciding the issues arising before this Tribunal He has urged that such material being confidential in nature and Central Government feels such material should not be disclosed to the opposite party in public interest and insists that still this Tribunal should take into consideration the said material

I am afraid where vital fundamental rights of the association and their members, who are large in number, are involved, it would not be fair for this Tribunal to act on any material or evidence which is not made available to the respondents Hence, it would not be possible to follow the principle laid down in the said two English case which actually pertain to different set of situation where the paramount interest of the minors was to be kept in view which is not the case before the Tribunal Hence, the Tribunal has to examine the question of declaring these associations as unlawful which definitely would bring to stand-still all the activities of these associations which admittedly are laudable So, I have not even looked into the said confidential files handed over to the Tribunal by the learned counsel for the Central Government because the counsel for the Central Government has not agreed for showing those files even to the counsel for respondents So I am of the firm view that no material can be taken into consideration by the Tribunal which is not made available for scrutiny and for analysis at least to the opposite counsel

Reference has been made to Administrative Law, 5th Edition by H W R Wade wherein Chapter 23 at page 776, 785, 803, the learned author while dealing with the Tribunals had opined that a prominent feature of the governmental scence is the multitude of special tribunals created by Act of Parliament Each of these is designed to be part of some scheme of administration and collectively they are sometimes called administrative tribunals and another fundamental feature of the tribunal system is that the procedure is adversary not inquisitorial In other words, the business of tribunal is to judge between two opposing contentions, as does a court of law rather than to conduct the case and call for testimony itself and it is fundamental that the procedure before a tribunal like in a court of law, should be adversary and not inquisitorial and the tribunal should have both sides of the case presented to it and should judge between them Without itself having to conduct an inquiry of its own motion, enter into the controversy and call evidence for and against either party and if it allows itself to become involved in the investigation and arguments, parties will quickly lose confidence in its impartiality, however, fair minded it may be

So, the contention raised is that this Tribunal has no administrative role to play It is true that this Tribunal is not to act as inquisitorial Tribunal and it has to decided the question referred to it by the Central Government keeping in view the evidence and material produced before it by the parties but the statute itself gives a power to the Tribunal for calling such information as is relevant from the Central Government as well as from the respondents and their office bearers So, to that extent, the observation made by the learned author quoted above cannot be accepted that the tribunal has no power to call for any evidence

I entirely agree with the observations made by Sahariya, J as a Tribunal constituted under the said Act in his order published in Gazette of India External dated the 4th September 1992 where in he has interpreted the provisions of the Statute and has held that the nature of the function of the Tribunal envisaged under Secion 4 of the Act is somewhat different from judicial review of administrative action The scope of judicial review is restricted to find out whether the opinion of the administrative authority is based upon existing relevant and cogent material and sufficiency of the material is beyond the scope of the judicial review He has held that under Section 4 of the Act, the Tribunal is not concerned with the material which may or may not have been taken into consideration by the Government The Tribunal is to autonomously adjudicate whether or not there is sufficient cause for declaring the association unlawful It was further observed in that order that the provisions show beyond doubt the working of the mind of the legislature to give primacy to independent judicial enquiry and adjudication of sufficiency of the cause by the Tribunal and the Tribunal has to judge the cause from the point of view of public interest unlike the usual determination of disputes inter se adversery parties. It was also held that the Tribunal has to guard against unnecessary transgression of fundamental rights of members of the affected association as also of the others whose personal liberty may be put into jeopardy by the notification He also expressed the view that consistent with the summary nature of the proceedings, the reception of evidence on affidavit is expressly envisaged and keeping in view the peculiar nature of the activities sought to be prevented in respect of which direct evidence is difficult to get and truely unrealistic to expect, the strict rules of evidence have to be relaxed to fit into the scheme of the provisions under the Act

The Act and the Rules only make it clear that as far as practicable, the Rules contained in the Evidence Act have to be applied It is to be kept in view that only six months period has been assigned by the statute for the decision being given by the Tribunal on the reference made to it The statute contemplates giving one month period from the date

of notification for the Central Government for making a reference and Tribunal has to further give one month's time to the affected associations to file replies to the show-cause notice. So, in fact, only four months' time is available to the Tribunal for recording the evidence and hearing the arguments and then giving its decision. So, keeping in view the constraints of the time, it must be held that technical rules of the Evidence Act are not to be followed while holding an enquiry under this statute. I reject the contention of the learned counsel for respondents that if particular document has not been proved strictly in accordance with the technical rules of proof incorporated in the Evidence Act, such a document should not be taken into consideration. In my view, the Tribunal should examine the probabilities of the veracity of the particular documents and then should base its decision on such documents, even though they are not strictly proved in accordance with the technical rules of The Evidence Act. I draw support for my view from the cases T.A. Miller Limited (supra), Rattan Singh (supra), Shiva Basappa (supra) and P.C. Purshottam (supra). No case has been brought to my notice taking any different view by counsel for the respondents.

The meaning of the word 'as far as practicable' culled out by the learned counsel for the respondents from the 'Words and Phrases' already indicated in my order are of no help to the learned counsel for respondents in convincing this Tribunal that strict rules of the Evidence Act should be followed. If I were to agree with this suggestion, then it would have been impossible for the Tribunal to have completed the recording of the evidence which was quite voluminous. The oral evidence led by the Central Government runs into 350 pages and oral evidence led by the respondents run into 407 pages.

Next question to be decided is as to what the words 'sufficient cause' mean. According to 'Words and Phrases', Prominent Edition 40A, the said words mean such state of affairs as would lead an ordinary man of caution and prudence to believe and conscientiously entertain strong suspicion of existence of such facts. While dealing with the question of detention of a person in case of Hardhyan Singh (supra), the Supreme Court had observed that essential concept of preventive detention is that the detention of a person is no to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenue acting in a manner similar to his past acts and preventing him by detention from doing the same. It is not possible to agree with the contention of the learned counsel for the respondents that same standard of proof should be expected in the present proceedings for proving the allegations against the respondents which is requisite for deciding a criminal case.

So, the reliance placed on the case on Warki Joseph (supra) is misplaced.

I would take Issue Nos. 2 & 3 at first for decision.

ISSUES NOS. 2 & 3

2. Whether the notifications in question issued by the Central Government are valid ?

3. Whether issue No. 2 is not within the scope of adjudication by the Tribunal under the Act ?

The first contention raised by the learned counsel for the respondents is that the notifications had not been issued by duly authorised person. The notifications have been issued under the signatures of PW18 Shri Srivastava, Joint Secretary in the Ministry of Home Affairs. It is true that by virture of definition of "Central Government" given in the General Clauses Act, the President of India is the Central Government and under Article 53 of the Constitution of India he is the head of the Executive and all executive functions of the Central Government are taken in name of the President. Article 77(2) of the Constitution of India entitles the Central Government to frame Rules and such Rules have been framed and have been shown to me and they are called 'Authentication (Orders and Other Instruments) Rules, 1958". It has been laid down in Rule 2 that orders and other instruments made and executed in the name of President shall be authenticated by the signatures of Secretary, Special Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary or an Assistant Secretary to the Government of India.

So, it is clear that Shri Srivastava had the due authority to sign the impugned notifications in the name of the President i.e. the Central Government.

The Allocation of Business Rules, 1961, amended upto November 10, 1992, have also been shown to me by the Central Government Counsel. These Rules have been framed under Article 77(3) of the Constitution of India and at page 35 the departments allocated to Ministry of Home Affairs have been enumerated and at item No. 29 the enforcement of Unlawful Activities (Prevention) Act, 1967, stands allocated to Ministry of Home Affairs.

Sh. Anand has then shown me Transaction of Business Rules, 1961, again framed under Article 77(3) of the Constitution of India wherein Rule 3 entitles the Minister Incharge of particular business to submit any matter to the Prime Minister or the Cabinet or Cabinet Committees or the President. So, it is contended by Sh. Anand that notifications in question issued and authenticated under the signatures of Joint Secretary of the Ministry of Home Affairs ought to be deemed to be issued by the Central Government and there was no need for the Central Government to have produced any specific evidence to show that in fact, the matter was submitted to either the Home Minister or to the Cabinent Committee. I agree with Sh. Anand's contentions and I, hence, hold that the notifications have been issued by duly authorised person on behalf of the Central Government.

The notifications, in my view, cannot be challenged before this Tribunal on the grounds which are normally urged for getting quashed the detention orders issued under the detention laws by filing petitions under Article 226 of the Constitution of India. Most of the judgements which have been relied upon by the learned counsel for the respondents are on the subject of detention laws, namely, Ram Bahadur (supra), Vakil Singh (supra), Shalini Soni (supra), Wasi Uddin Ahmed (supra), Ajit Kumar (supra), K. K. Sarin (supra), Ram Manohar Lohia (supra) P. Mukherjee (supra), D. S. Aggarwal (supra) and Mohd. Dhanna Ali Khan (supra).

These judgements lay down that constitutional safeguards laid in Article 22(5) have to be strictly adhered to while examining the validity of the detention orders It is evident that detention orders isued under the detention laws are not subject to the adjudication by any Tribunal. Only opinion of an Advisory Board is obtained for continuation of the detention of such detenus. So keeping in view the constitutional provisions which have been explained in those judgments holding that only the relevant material would be taken into consideration while ordering the detention and in case any irrelevant material has been taken into consideration or some relevant material has not been taken into consideration and if the grounds are not specified and are vague or the material and the documents on the basis of which the detention order is based are not supplied pari passu the grounds of detention or not supplied in the language known to the detenu to enable the detenu to make an effective representation at the earliest opportunity and are not supplied within the statutory period, then such detention orders are liable to be quashed.

In my opinion, no analogy can be drawn from the requirements which are to be met for getting the detention orders upheld with the validity of the orders passed under the Act which have come for adjudication before this Tribunal. All the notifications of the Central Government declaring particular associations as unlawful are not effective till such notifications are confirmed by the Tribunal and the Tribunal has to hold an inquiry for purposes of deciding whether or not there is sufficient cause for declaring the said associations as unlawful. So, the notifications cannot be declared invalid by this Tribunal on any other grounds except if the Tribunal is to come to the conclusion that there is no sufficient cause for declaring the said associations as unlawful. I have already reproduced the contents of the notifications in the opening of my order.

It is evident that in the notification pertaining to VHP the ground mentioned is that VHP has been encouraging and aiding its followers to promote or attempt to promote on grounds of religion disharmony or feelings of enmity, hatred or illwill between different communities. Primary facts which constitute this ground are stated to be the speeches of Sh. V. H Dalmia, Sh Ashok Singhal, Smt. Vijaya Raje Scindia and Acharya Giriraj Kishore, office bearers of VHP and the fact that the followers of VHP had participated in the demolition of structure commonly known as Ram Janam Bhoomi-Babri Masjid situated in Ayodhya in the State of Uttar Pradesh on December 6, 1992. Although it is not specified as to which are those particular communities amongst whom such feelings of enmity, hatred or illwill and disharmony are promoted or attempted to be promoted, yet reading the whole of the notification makes it evident that communities referred to are 'Hindus' and Muslims' So, it cannot be said that this notification on the face of it is invalid.

Similarly, in the notification pertaining to RSS, the ground mentioned is that RSS has been encouraging and aiding its followers to promote or attempt to promote on grounds of religion disharmony, or feelings of enmity, hatred or illwill between different religious communities and then primary facts furnished are that RSS has been making imputations and assertions that members of certain religious communities have alien religion and cannot, therefore, be considered nationals of India, thereby causing and likely to cause disharmony or feelings of enmity or hatred or illwill between such members and other persons and RSS Swayamsewaks had participated in the demolition of the structure commonly known as Ram Janam Bhoomi-Babri Masjid. Reading the primary facts which constitute the ground would make it self-evident that the communities metnioned are Hindus and Muslims. So, the notification cannot be termed to be vague in any manner. The notification per se does not appear to be invalid.

As far as notification pertaining to Bajrang Dal is concerned, again same ground has been mentioned as in the other two notifications and the particulars mentioned are that BD has been organizing exercises, drills or other similar activity intending that the participants in such activities shall use criminal force or violence or knowing it to be likely that the participants in such activity will use criminal force or violence against other religious communities and the members of the BD had participated in the demolition of the structure commonly known as Ram Janam Bhoomi-Babri Masjid. Again this notification also cannot be considered to be vague and I hold that the same per se is valid. It is self-evident in this notification that the communities referred are Hindus and Muslims although in all these notifications the words 'Hindus' and 'Muslims' have not been used.

A contention was raised that if any of the grounds mentioned in the notification is not established the notification should be set aside on that ground alone and again the support was sought from the case of Ram Bahadur (supra) which was again a case dealing with the detention laws. Even in the detention laws now amendments have been made that even if one of the grounds is found to be not established the detention order can be sustainable on the basis of other valid grounds. However, analogy of detention law is not applicable to the present Act. Moreover, in all these notifications the Central Government had made it clear that the declaration is made on all or any of the grounds set out in the respective notifications. It is also to be mentioned that only one ground has been mentioned in each of these notifications whereas a

number of primary facts have been given which, constitute the said ground. So, these issues are decided in favour of the Central Government and against the respondents.

ISSUE NO. 4

While discussing the preliminary points I have already come to the conclusion that the Central Government was entitled under the statutory rule 5 to furnish alongwith the notifications the detailed facts in support of the grounds. The Central Goverament is also entitled to place all relevant material and evidence in support of the grounds taken in the notification. So, the Resume and the documents annexed with the Resume ought to be looked into and considered by the Tribunal for deciding as to whether or not there is sufficient cause for declaring the said associations as unlawful. So, this issue is decided in favour of the Central Government and against the respondents.

ISSUE NO. 1

1. Whether there is sufficient cause for declaring the RSS/VHP/Bajrang Dal as unlawful associations under the Unlawful Activities (Prevention) Act, 1967 ?

At the outset I may mention that in the three impugned notifications, no plea has been set up that these three associations are inter-linked or one association is the front organization of another association. While referring the notifications for adjudication to this Tribunal, a Resume has been sent alongwith each notification but the facts mentioned in the Resume are common to all these three associations.

The Central Government has come up with a new plea in the Resume that in fact, VHP is the front organization of RSS and Bajrang Dal is the front organization of VHP and there are enough material and evidene to show that these three associations are inter-linked and the facts have been given in detail in the Resume to show such inter-linkage amongst the said three associations. I have already given the details of such facts in the opening of my order and has also referred to the contentions raised by the learned counsel for the Central Government in this respect in detail which I need not reproduce. The short question which arises for consideration is whether the Central Government is entitled to bring out a fresh plea in the Resume to show that these three associations are inter-linked and if the Tribunal comes to the conclusion that there is sufficient cause for declaring VHP or BD or both of them as unlawful associations then as a corollary this Tribunal must declare RSS also as unlawful association even though there may not be sufficient evidence and material available on the record to declare RSS as unlawful association independently.

I have not been able to appreciate the contention of the Central Government that these three associations which admittedly are separate legal entities and in respect of which three separate notifications have been issued without at all alleging in those notifications that these three associations are inter-linked, it is possible for this Tribunal to go beyond the notifications and hold that these three associations are inter-linked. I have already held that the Central Government has no right to set up any new ground in the Resume or in evidence in support of its case that these associations should be declared unlawful associations.

I have already held that in order to constitute the grounds, some primary facts have to be given, otherwise the same would not be treated as grounds. It was very material and primary fact to allege that these three associations are inter-linked and V.H.P. is the front organisation of R.S.S. and Bajrang Dal is the front organisation of V.H.P. In other words, the Central Government now wishes to utilise the grounds given in the notifications declaring V.H.P. and Bajrang Dal as unlawful associations as also the grounds for declaring R.S.S. as an unlawful association. This cannot be legally allowed. The Central Government has of necessity in law confined its case to the grounds set up in the notifications. So, these primary facts that these three associations are inter-linked and V.H.P. is the front organisation of R.S.S. and Bajrang Dal is the front organisation of V.H.P. in accordance my view constitute a ground because, inter-alia, the Central Government has to show that the acts of V.H.P. and/or Bajrang Dal are binding on the R.S.S. and such primary facts, in my opinion, ought to have appeared in the notifications.

So, any evidence led to show that these three associations are inter-linked has to be ignored by the Tribunal and the pleas taken in the Resume in this connection that VHP is the front organization of RSS and BD is the front organization of VHP and these three associations are inter-linked have to be brushed aside. I need not express any view on the evidence led on this point.

I will now deal with the case set up against the three associations separately.

CASE AGAINST VHP

Admitted facts are that VHP was constituted in 1964 and was registered with the Registrar of Societies in 1966. The main objects of VHP admittedly are consolidation and strengthening of Hindu Society, protection, development and publicity of Hindu values of life, establishment, maintenance, taking over and management of temples, maths etc., preaching and teaching principles and practices of Hindu Dharma and culture and to diffuse knowledge and preach ethical principles and practices of Hinduism suited to modern times.

The history of this country is well known. It is not necessary to spend much time in narrating the history. Suffice it to mention that Hindu civilization has been in existence since about 5000 years prior to B.C. or so. This land has given birth to Budhism which has spread in a number of countries. The laudable objects being pursued by VHP cannot be objected,

for strengthening the various Hindu sects for purposes of uniting them which, according to VHP, would comprise of not only different sects which are commonly known amongst Hindus but also Budhists, Jains and another object is to assimilate the Scheduled Castes/Scheduled Tribes completely in the main stream of Hinduism. From time to time in different ages communities belonging to other religions particularly Jews and Parsis have come for taking refuge in this land and they have been living in this land peacefully and there has arisen no confrontations between Hindus and members of such communities like Parsis and Jews.

It is true that certain Muslim Rulers of other countries invaded this country from time to time for looting the riches of this country and later on with the advent of Babar they established their roots in different parts of this country and there took place large scale conversions from Hindus to Muslims either by coercion or by lure of better opportunities but the fact remains that there has been continuous irritation amongst the two major communities of Hindus and Muslims from time to time. The frictions were aggravated by the policies pursued by British Rulers. To keep a hold on this country they devised the policy of divide and rule and they gave such encouragements to certain sections of Muslims so that those Muslims should not get assimilated in the main stream of the culture of this country and ultimately the facts of the hitsory show that due to obscurantist and obdurate attitude being adopted by leaders of the Muslim League who were being encouraged by the British Rulers we could not retain our country united and unfortunate partition of this country took place. The communal holocaust witnessed in this country on account of partition is still vividly etched in the minds of older generation.

Unfortunately even after partition of this country incidents of communal violence between two major communities of this country have been taking place now and then. There have been set out various Commissions of Inquiry for probing into such incidents of communal violence and to determine the causes which led to such communal violences and it is stated that reports have been given by such Commissions from time to time. One of the important requirements for maintaining harmony and peace in this country is that somehow or the other some strong remedial measures are taken for removing the root causes which lead to communal violence and also some strong measures being taken for controlling any communal violence at the very initial stages. It is true that some of the Moghul Rulers had set up mosques after demolishing some temples or had set up mosques at such holy places of Hindus which somehow remain cause of resentment to some sections of the Hindus. It should be realised by all that places of worship, may be of any community, have to be given due respect by all. The places of worship are meant for praying to God in ways peculiar to every religion as required by such religion respectively. No religion teaches hatred for others, every religion speaks' language of love. There should have been efforts to bring about synthesis of all good thoughts of all the religions so that feeling of oneness should stand inculcated in the bosom of every citizen of this country.

Realising the communal situation prevailing in this country on the dawn of independence the framers of the constitution of this country in their wisdom provided in the constitution a policy of secularism and such provisions which should enable all religions to flourish in this country and there were also made certain provisions for benefit of the minority communities and they were given the fundamental rights to propagate their respective religions and to establish educational institutions as suitable to their needs.

The battle to fight the melody of communalism should have been fought in the minds of the people by laying down a common syllabus of education from Nursery Classes upto higher classes in schools and the directive principle laid down in the Constitution that primary education would be compulsory for all the citizens of this country, I wish, had been implemented in right earnest, then possibly communalism might have disappeared from the very face of this country. It may be that educational institutions being run by minority communities should be allowed to have some classes for teaching their respective religions but those schools ought to have been also made to comply with the common secular education being imparted in other schools being run by the Government or municipalities in this country. The secularism should not have been taken to this extent that the schools being run with the Government fund should not have classes for imparting moral education to the children. Efforts ought to have been made to cull out all good principles of various religions prevalent in this country and syllabus ought to have been framed constituting such good principles of morality and of remembering God and same introduced in all the schools compulsorily.

It is healthy to rationally discuss the tenets and principles of various religions so as to bring about synthesis in the thought processes of all concerned. However, use of abusive, vituperative and provocative language and criticising the tenents of religion of other persons have no place in our civilized society based on rule of law. No one is above law as per our Constitution. The law is not respector of persons how which and low based those persons may be.

In case it is the purpose of some associations or parties to bring everybody in the main stream, meaning thereby that everybody should consider himself to be proud citizen of this great country, the efforts can only succeed if some confidence is reposed in those alienated, if any, citizens of this country by making them realise through persuasion or through rational discussion that they may not feel alienated or neglected in this country. This object cannot be achieved by hurling filthy abuses or by calling the members of a particular religion or community as intolerant by traditions and habits and by just condemning the attrocities committed by some of the Muslim Rulers in the past history. It has been mentioned on behalf of the respondents that they want the ancient culture of this country to imbibe every

person inhabiting this country, may be belonging to any sect or religion, and they have named that culture as "Hindu Tatva'. I wish that they should have named such culture as 'Bhartiya' because the word 'Hindu' is taken in common parlance as to the persons belonging to Hinduism as religion. If you tell the members of other religions to call themselves as Christian Hindus or Mohammedan Hindus, the laudable object of bringing members of those communities to realise the cultural history of this country and to immerse them in that culture cannot be easily realised.

One of the contentions raised before me on behalf of the respondents is that the courts have no jurisdiction to examine the matters of faith. It has been stated by the witnesses of the respondents that it was a matter of faith with the Hindus that Lord Ram had taken human appearance at the place where disputed structure stood constructed and it is also a matter of faith that Lord Ram's Temple be constructed at that place Certain fundamental rights regarding religious faiths have been conferred on the citizens of this country which we find in Article 25 of the Constitution of India but it is evident from the very reading of the said Article of the Constitution of India that all those fundamental rights are subect to restrictions being imposed on account of public order. So, they are not absolute fundamental rights.

Reliance was placed in the case of Edna W. Ballard (supra) decided by the Supreme Court of USA. I have already quoted the relevant portion of that judgment at page 240. That case was not dealing with the subject of impact of the religious faith when put into practice on 'public order' or 'public tranquillity'. It was, no doubt, laid down and rightly so that the man's relation to his God was no concern of the State and matters of such faith cannot be subject of trial. However, it was made clear in this very judgment that the first amendment of the Constitution of USA embraces two concepts—one freedom to belief and the second freedom to act. The first was held to be absolute but it was mentioned that in the nature of things the second cannot be, meaning thereby that if certain acts are performed in pursuance to the religious faith or belief and those, acts are found to be illegal or adverse to the interest of any other person, the said acts are not beyond the purview of the courts.

So, to say that it is a matter of faith of the Hindus that Lord Ram's Temple be constructed at the disputed spot and the same is not within the purview of the courts, I say with all humbleness, is not supported by any legal authority. Our Constitution does not recognise such thing. All disputes of civil or criminal nature have to be decided by the courts of this country. The matters of belief cannot be allowed to permit some persons to take law into their own hands for putting into practice certain religious beliefs which have civil or criminal consequences. That is why Shri V H Dalmia, President of the VHP, when was put a question in this regard had to admit that if in practice such matter of faith results in civil and criminal consequences then the same are not immune from the jurisdiction of the courts.

In the case of Robert Murdock (supra) relied upon by counsel for the respondents for the same proposition, again the question which arose for decision was whether a tax could be imposed or not on the persons who wanted to disseminate religious beliefs through the distribution of literature within the boundaries of particular Corporation. Facts of the case have been referred by me at pages 241 & 242 of the order. Again, it was held in this judgment that the ordinance, which was subject-matter of the challenge regarding imposition of tax, was not attracted to the problems with which the policy power of the State would be concerned for dealing with the literature which was annoying or distasteful to any members of the other community. In that case the charges have not been levied for breach of peace.

So, this judgment does not support the proposition as canvassed by the respondents that even if certain matters of faith when put into practice have some adverse civil or criminal consequences for the members of other community, still the same would be beyond the purview of the courts. It is true that no court can go into the question as to the faith being nursed by majority of the Hindus that Lord Ram's birth place is located at a particular spot but if in pursuance to that faith attempts were to be made to forcibly demolish or re-locate the disputed structure or to make efforts to construct a temple in disobedience of the orders of the court, with no stretch of reasoning it can be held that such matters would not be within the purview of the courts of law of this country.

Even the cases cited, namely, Rana Muneshwar Kumar Singh (supra), Govindlalji (supra) and Grace Marsh (supra) do not go to support such a wide proposition that in the matters of faith when same are put into practice and result in civil or criminal consequences, even then such acts would not be within the purview of the courts.

It is settled proposition of law that in case particular judgment of the highest Court in this country decides a matter on the basis of foundation or para materia on which a dispute is raised, the legislature is not debarred from changing the foundations or para materia which is basis of the judgment. In that event, it cannot be said that he legislature has set aside or declared any judicial pronouncement as invalid.

The domains of legislature and judicial fields are well defined in the Constitution and are well-known to be detailed out here in the order.

Now coming to the particular allegations made against V.H.P. itself mentioned in the resume that the activities of V.H.P. are no longer confined merely to propogation of Hindu culture but have been directed against the minority religious groups, especially those belonging to the Muslim community, the Central Government has tried to prove the grounds mentioned in the notification by producing on record the documents in shape of newspapers and the press releases which contain the alleged provocative speeches of the leaders of the V.H.P. which would promote feelings of disharmony, enmity and ill-will between the Hindus and the

Muslims. Reference is also made to certain leaflats and pamphlets issued by V.H.P. which also have same effect. The reliance is also placed on certain audio cassettes and video cassettes which also contain such vituperative and provocative speeches of such leaders. A lot of reliance has been placed on speeches of Sadhvi Ritambhara and Acharya Dharmendra who admittedly have been invited by the V..H.P. in its public meetings and have given such speeches from the platform of V.H.P.

I would first refer to the alleged speeches of Acharya Giri Raj Kishore, VHP W1, a leader of V.H.P. In Ex. P-72 in the newspaper Jalte Deep dated November 29, 1992, the news item appeared under the title "that direct action would be taken in respect of 3000 religious places" and this news report is based on the press conference of this witness The witness had admitted that he had given this press conference on November 28, 1992. He admitted that he did state that V.H.P. did not wish that the peaceful efforts for renovation should fail and in that situation, militancy is likely to take birth in Hindus and that without disobeying the orders of the Court, V.H.P. knows how to perform the Kar Sewa and he gave example of story of Raja Hirnakashyap's assassination mentioning that Hirnakashayp could not save himself ultimately despite having all constitutional facilities.

However, he denied having stated in this press conference, as reported in this newspaper, that the fronts would be opened in respect of other religious places in case the efforts to renovate the Ram Temple do not prove successful. He also denied having stated that on December 6, 1992, Kar Sewa at Ayodhya would commence and the persons who were talking about injuction order of the Court should not forget that there were 3000 other religious places which are not within the purview of injuction orders and which V.H.P considers to have been constructed in place of Temples. He denied having given the warning that if there was any obstacle created in the renovation of Lord Ram's Temple, then the action would be taken in respect of other 3000 religious places. He also denied having made the ssatement that limits of patience had exhausted and the people did not wish for any decision from the Courts but they want construction of the Temple and in case there was any obstacle in such efforts, then the power of Hindus would not remain mum.

The short question which arises for consideration is whether the said newspaper report is distorted one and does not give the correct facts as stated by this witness to the press correspondent. It is admitted fact that no contradictions have been issued by this witness esserting that his speech had been distorted.

The witness admitted the correctness of the news item report in Ex. P-65 dated December 2, 1992. He has mentioned in this statement that he warned the Prime Minister that in case he got certain people to indulge in activities of destruction for defaming the kar sewaks and if some untoward occurrence took place, the same would be the responsibility of the Prime Minister. He also made a statement that Kar Sewa would be carried out on December 6, 1992 and he defined the Kar Sewa as the act of filling, cleaning and construction.

In respect of the news item appearing in P-66 National Herald dated December 6, 1992, the witness deposed that the news item that Kar Sewa would be carried out including construction in 2.77 acres of land is incorrect reporting but other portions of the news item are correct. In this news item, it was mentioned that in the Kar Sewa, construction work would also be done and the decision of the Marg Darshak will not be influenced by the Court decision in respect of 2.77 acres of land acquired and when he was asked whether the construction would not amount to violation of the Supreme Court order, this witness is stated to have mentioned that they were ready to go to jail and face bullets and the construction will continue till the Temple is completed.

In respect of the news item appearing in Ex. P-67 Patriot dated December 3, 1992, the witness stated that he did mention that it would not be symbolic Kar Sewa and the construction would be carried out in the undisputed land. In the newspaper, he appears to have stated that the Kar Sewa with the ultimate object of construction of Temple will continue for 18 days.

In respect of news item appearing in Ex. P-68, Times of India dated November 30, 1992, the witness stated that the news item is a little bit distorted. Only portion which according to him is distorted is in respect of appointment of the Observer by the Supreme Court. In the news item, it was recorded that this witness termed the order of the Supreme Court appointing an Observer as unfortunate and he emphatically stated that Kar Sewa would begin from December 6, 1992 under all circumstances and he also opined that the Apex Court had gone beyond its jurisdiction by appointing a District Magistrate as an Observer to monitor the Court orders which amounted to expressing no confidence in the constitutionally elected Uttar Pradesh Government and the order was an insult to democracy.

He admitted the correctness of the news item appearing in Ex. P-70 newspaper dated November 27, 1992 where it is mentioned that this witness had told the correspondents that every Kar Sewak reaching Ayodhya would have identity paper and Kar Sewaks could have identity papers of different colours and identity papers would show the photograph of Kar Sewak, his name and other particulars. In this statement, he had mentioned that the Supreme Court had not put any obstruction on the carrying out of the Kar Sewa but had injuncted for not raising any permanent construction but Kar Sewa would not be in violation of the order of the Court but if the Kar Sewa proposed to be carried out is deemed to be in violation of the Court orders, the same would be carried out.

He admitted the correctness of Ex. P-71 which is a press release issued by Media Centre containing the speech of this witness and it is dated December 2, 1992. In this press release, this witness had mentioned about resolve to carry on the Kar Sewa from the spot where it was left in the Kar Sewa done on July 26, 1992 and had mentioned that the Kar Sewaks would be functioning within the discipline to be enforced by R.S.S. workers and he referred to an incident of

violence where certain kar sewaks had been pelted with stones at Acharya Narender Dev Nagar Railway Station at a distance of 3 Kms. from Ayodhya. He condemned such incident and he also expressed that the Courts have not been able to enforce its decisions where faith of muslims was involved and thus, the Courts have no jurisdiction in respect of the faith of Hindus as well In this very press release, he mentioned that in case the Kar Sewa was to be stopped by the Central Goverament with the help of security forces, then the Kar Sewa would be commenced not in respect of three religious places but in respect of 3000 mosques for getting them removed.

In the notification, a speech was imputed to this very witness wherein he had mentioned that if legal battle and politics came in the way of constuction of a temple direct action in respect of other mosques which were built after demolition of the temple cannot be ruled out However, as I have mentioned above, the witness has admitted the contents of the aforesaid press release wherein similar statement is stated to have been made by this witness.

In the notification, it is mentioned that Sh Vishnu Hari Dalmia, VHP W5 had in a meeting held on November 8, 1992 declared that Ram Janm Bhoomi Tempe will be constructed in the same way it was demolished by Babar and kar sewaks were pressurising the leadership that they should be called not to construct the Ram Janm Bhoomi Temple but to demolish the Babri Masjid. In reply to the show-cause notice it was categorically denied that any such meeting took place or any statement was mad by Shri Dalmia. Mark 'C' is the I B report which is ebing relied upon to show that such a statement was made by Sh. Dalmia to a contract man and that contract man had given the facts to I.B. Officer who prepared this I.B. report.

Although in the reply, a complete denial was made that any such meeting took place, yet in evidence, the witnesses admitted that after the official meeting between, the leaders of the All India Babri Masjid Action Committee and leaders of V.H P. fizzled out on account of the leaders of the All India Babri Masjid Action Committee not agreeing to continue the negotiations as the V H P. had already announced the Kar Sewa programme for December 6, 1992, the office bearers of V.H.P. had come back to the office of V H P. and they met on that very day in the evening of 8th Nov. 1992 In the cross-examination, he admitted that besides Mr Ashok Singhal, himself, Mr. B. P Toshniwal, some exports were present whereas Shri Ashok Singhal denied the presence of any such experts in such meeting.

In case a meeting had taken place in this manner, it is not understood why in the reply a complete denial was made regarding holding of such a meeting on November 8, 1992 Learned Counsel for respondent had pointed out that in the resume and in Mark 'C', the date of such meeting is mentioned as November 9, 1992 and so also in the White Paper issued by the Central Government. It is not correct. If we read the Mark 'C' document carefully, it becomes evident that a report was prepared on November 9, 1992 when the contact man have the information regarding the said meeting So, it is possible that meeting took place on November 8, 1992 where some contact man of I B. was also present and he narrated the facts to the officer of I.B on November 9, 1992 on the basis on which the said I B report was prepared. So, in all probability the words uttered by Shri Vishnu Hari Dalmia, as mentioned in the notification as are contained in document Mark 'C' are probably uttered by Sh Dalmia in that meeting

The speech imputed to Smt Vijaya Raje Scindia in the notification is that on November 23, 1992, she had stated that Kar Sewa would be carried out with full determination defying all restrictions if required, including even the Court orders and she had averred that the construction of Ram Temple was a matter of faith and could not be confined to the jurisdiction of judiciary and she stated that temple would be constructed at all costs and for which the so-called Babri Mosque would have to be demolished Smt Vijaya Raje Scindia appeared as VHP W8. In examination-in-chief, she denied having made any such statement, as mentioned in the notification In cross-examination, she stated that due to her old age and the disease from which she was suffering, her memory had not remained so sharp. According to her, V H P always considered the disputed structure as a temple and she could never utter in such statement that Temple would be constructed at all costs and so-called Babri Masjid would have to be demolished. She stated that she could not remember as to what exactly her statement was with regard to the disputed structure and if she had made any statement, it would be for relocating of the disputed structure and not for demolishing the said structure. She deposed that although V H.P. considered the disputed structure as temple, still in order not to hurt the sentiments of others, V H P. was agreeable for relocation of the disputed structure even though the same was treated as a sign of slavery.

She asserted that it is the faih of V.H.P. that Court cannot decide the question whether there existed the temple of Lord Ram at the site or not and same is the position with regard to the faith regarding construction of the Temple However, she admitted that she had stated that Temple was to be constructed at the said place but not immediately but ultimately She deposed that as assurance had been given to the Court, there was no question of her making a statement that defying all restrictions, the temple would be constructed She admitted that she had addressed a press conference at Patna She was confronted with the news item Ex P-73 in Nav Bharat Times dated November 24, 1992 where it is mentioned that Smt. Vijaya Raje Scindia had clearly stated that despite the stay order of the Court, the Kar Sewa would be carried out in the acquired land for construction of the temple and that the disputed structure had to be relocated for constructing the Ram Temple So, it is not possible to hold that she had stated any time that the disputed structure is to be demolished.

Then, in the notification, it is recorded that Sh Ashok Singhal, General Secretary of V H P in a public meeting in Bilaspur on November 14, 1992

stated that the muslims would be taught the language of force in case they failed to understand the language of reasoning. Sh. Ashok Singhal appeared as VHPW7. He denied that he had made any such statement, as recorded in the notification. The other statement imputed to him was of December 7, 1992 at Jaipur. He denied that he had stated that the disputed structure can be demolished or removed at any time. He also denied that he had stated on December 3, 1992 that whether legal or illegal, the saints decision would be followed with regard to the structure. He denied having made any statement on November 12, 1992 that a contigency plan had been kept ready in an anticipation of a police crackdown on V.H.P. leaders and V.H.P. was determined to start the second battle for freedom to break the shackles of Ram Janm Bhoomi.

He admitted having made a statement on November 20, 1992 that no power on earth can prevent Kar Sewa on December 6, 1992 and any attempt to prevent Kar Sewa by violent action will have widespread reaction all over the country for which the Centre would be fully responsible. He admitted having made a statement on September 17, 1992 that he feared holocaust if temple construction was stopped and if allowed this would bring ever-lasting peace in the country and Muslims should be taught to respect the majority Hindu sentiments in the country. He admitted having made a statement on November 22, 1992 that if kar sewaks would be subjected to any atrocities, they would face the same and reaction to any such action will be country-wide for which Rao would be responsible.

He was confronted with Ex. PW7/6, transcript of a speech recorded in an audio cassette wherein he is stated to have mentioned that in this country, muslim leaders did not understand the language of reason and they can understand only the language of force and in case they wanted to understand the language of force, they would be taught such language.

At this stage, I may mention that the relevant audio cassette containing the purported voice of this witness at first was sought to be played by learned counsel for the V. H. P. but later on it was not got played. So, there is no statement of this witness denying his voice in that audio cassette. I will refer to question of proof of such audio cassette in the later part of the order.

As far as the particular leaflets and pamphlets are concerned, there was luke warm denial made in the reply of V. H. P. that such leaflets and pamphlets had not been issued by V. H. P. and even if they are issued by V. H. P., the same are not covered by the provisions of Section 153-A. It was admitted in the reply that Mr. A. Shankar, officer bearer of V. H. P., had issued the pamphlets bearing his name but it was pleaded that the same expressed his personal view and not the view of the V. H. P.

VHPW1/8 is a magazine admittedly published by V. H. P. and at page 10 of the magazine, exhibited as Ex. VHPW1/P-2, it is clearly mentioned therein that the said pamphlets and hand-bills have been distributed by V. H. P. in crores. P-6 to P-22 are said leaflets and pamphlets. Sh. Anand has particularly referred to P-7, pamphlet issued by V. H. P. under the title "Hindu Jago Desh Bachao" and its writer is A. Shankar and in the reply of V. H. P., this fact has not been disputed that this pamphlet has been written by Sh. A. Shankar. It has been mentioned in this pamphlet that in the fight for freedom, the persons who sacrificed their lives, out of them 95 per cent were Hindus but after independence, they are treated as third-rate citizens and certain members of the minority community, who were instrumental in getting the country partitioned, are treated as first-rate citizens and that Muslims and Christians have hundreds of countries while Hindus have only one country and India has been made a Dharamshala for others and Hindu religion is not being taught in schools and for organising festivals of Hindus, permission is to be obtained from the Government. Then, it is mentioned that Hindus are being converting day and night to other religions and cow slaughter is not being stopped and 75 per cent Hindus are not getting the admissions in schools and colleges while the minority population is getting such admission upto 40 per cent and same is the position with regard to the services in the Government and that Hindu Kings had got constructed several Mosques and Churches while Muslim rulers had demolished thousand of Temples and in India, there have been muslims occupying the highest places of President of India, Governor and Chief Minister while in Pakistan and Bangladesh, Hindus have been exterminated and no Muslim speaks against such atrocities.

Then reference is made to slogans for Hindus regard family planning that they are two and there are two children while muslims' slogan is that they are five and there are 25 children and in this way, the Hindu population, as compared with the Muslim population, is coming down and after 25 years, no temple, Math, hospital, house, factory or agricultural land would remain in possession of Hindus and the Hindus would become slaves and beggars.

P-21 is another pamphlet issued by Sh. A. Shankar under the title "Aatankvaad, Hinsa & Garibi". One of the things mentioned in this pamphlet is that all demands of the muslims are being met but Hindus were being deprived of loans, Government jobs and even admission in colleges. It is alleged that the muslims have been pampered and the policy of appeasement is being followed in favouring the muslims by all leaders from Nehruji onwards which has resulted in communal violence and poverty for the Hindus. A broad side allegation has been made in this pamphlet that persons raising the slogans for Pakistan and condemning India and persons who are guilty of butchering cows are being treated as secular people and the purpose of secularism is only to finish off the Hindu community. Then allegation is made that efforts are being made to convert India into an Islamic country and Nagaland into a Christian land and these things are being perpetrated by muslim infiltrators from Pakistan and Bangladesh. It is admitted by this witness of V. H. P. that in their processions, slogans have been raised to the effect "Abhi to Yeh Jhaanki Hai, Kaashi Mathura Baaki Hai, Ayodhya to ab Humari Hai, Ab Mathura ki Baari Hai".

The main cause as given out by PW-7 for banning these associations is the carrying out of the Ram Janm Bhoomi movement by these associations at a high pitch which resulted in communal tension being created since 1989 onward which resulted in communal riots at large scale in these years and sense of insecurity being perculated in the minds of the minority community of muslims.

Ayodhya has been treated by Hindus as a holy place of pilgrimage as it finds mention in the epic Ramayana and is believed to be the birth place of Lord Ram. A mosque was constructed at Ayodhya and it is claimed by respondents that it was built at the site to be the birth spot of Shree Ram and earlier, a temple had stood there which had been demolished and this dispute is a long standing one but in 1949, for the first time. some idols of Ram Lala were placed in the disputed structure. There is a Ram Chabutra located in between the inner wall of the disputed structure and the outer wall.

A copy of the order Sh. Hari Kishan, Sub Judge dated December 24, 1885, which is produced by V. H. P. on the record and which has been now referred to by learned counsel for the Central Government in his rejoinder arguments. It was clearly held in this judgment that Hindus had a belief that Lord Ram took human appearance at the spot where Ram Chabutra is located. This suit was filed by Mahant Raghuvar Dass, a Mahant of Ajamsthan, against Secretary of State for India and one Mohd. Asgar and the relief sought was that the plaintiff be permitted to construct a temple over the Ram Chabutra. Two issues which were framed were to the following effect :

1. What was the area of the Chabutra in suit ?

2. By whom amongst the parties said land known as Chabutra is owned and possessed ?

Dealing with the issues, it was found that the said Chabutra had certain impressions of human feet embossed on it and the same was being worshipped by Hindus and an idol of Thakurji stood installed which was being worshipped and the Chabutra had been in the possession of the plaintiff which fact was not disputed. In between the disputed structure called Mosque and the said Ram Chabutra, there was a wall in existence and there were separate boundaries between the mosque and the Chabutra and earlier both Hindus and Muslims used to offer prayers at their respective Ram Chabutra and the mosque. There took place some quarrel between Hindus and Muslims in 1855 and in order to avoid any future fights between the the two communities, a boundary wall was constructed so that the Muslims could worship inside the mosque on one side of the wall and Hindus should continue to worship outside the wall on Ram Chabutra and a finding was given in this order that the Chabutra and the land which was situated outside the boundary wall belong to the Hindus. There was one passage for going to that Ram Chabutra and the mosque. It was found that if a regular temple was allowed to be constructed on the Chabutra, there would be sound of temple bells which would disturb the muslims who may be offering prayers in the other side of the wall in the mosque and it is likely to cause breach of peace resulting in communal incidents and so, relief to construct the temple on the Ram Chabutra was declined.

The matter was taken to District Judge and copy of his order dated March 18, 1886 is also placed by the learned counsel for respondents on the record in which it is clearly recorded that the said Chabutra is said to indicate the birth place of Lord Ram. The appeal was dismissed on merits.

It has been contended by Sh. Anand in rejoinder arguments that after placing of the idols in the disputed structure, the stand is being now taken that Lord Ram's birth took place on the site where the disputed structure stood constructed and not at the site where Ram Chabutra stood constructed. Be as it may, the stand of the respondents is that in fact there existed a Hindu Temple at the site where disputed structure had been constructed. This question is not to be decided by this Tribunal. The only question to be decided is whether in giving a momentum to the Ram Janm Bhoomi movement any acts have been committed by the V.H.P. which could be termed to be covered by the provisions of Section 153-A of the Indian Penal Code.

It is not necessary that the V.H.P. should have been proved to have any plan for the destruction of the disputed structure when the Kar Sewa was to be performed on December 6, 1992. The various speeches referred to above of the leaders of V.H.P. indicated that V.H.P. wanted to carry on the construction of the Temple from the stage at which it was left in July 1992 when only a platform was constructed. It is not disputed that the plan prepared by the architects for construction of Lord Ram's Temple indicated that the construction would commence from the said platform and the 'Garb Greh' of the temple would be located at the spot where disputed structure stood. It is an admitted fact that due to disputes arising pertaining to the disputed structure, the same was attached under Section 145 of the Code of Criminal Procedure and the locks were put on the outer gate of the disputed structure and since 1949, the structure had not been used as a mosque and it no longer remained a functional mosque. In 1986, under the orders of the District Judge, the said locks from the gate were removed and since then, the Ram Janm Bhoomi movement had gained in tempo and as a counter reaction All India Babri Masjid Action Committe was formed by some of the Muslims who started resisting this movement.

It is not disputed that on the platforms of VHP in this Ram Janam Bhoomi movement Sadhvi Rithambra and Acharya Dharamendra have been making speeches. The correctness of the contents of those speeches of Sadhvi Rithambra have not been disputed. Sh. Ashok Singhal in cross-examination at page 578 admitted that Sadhvi Ritambhra had been in her speeches uttering words that in this country there is one point programme being carried out by the followers of Islam for producing more and more children and for having more and more wives and for converting the India in colour of Islam and she had been

saying that slogan of Hindu is "We two and two children" whereas the slogan of Muslims is "We five and our twenty-five children" and she had been saying that every Muslim is proclaiming that he would marry five times and produce 25 pilley(puppies). She also utteret the words that Hindus were getting thus reduced, they were 32 reduced to 16 and then to 8 and then to 4 and in the coming generation Hindu family would be going in for only one child only and that it is not their fault whereas muslims are all united.

As an after thought Sh. Ashok Singhal tried to say that she did not use the word 'Pilley'. It is significant to mention that he had no hesitation in admitting that even VHP endorses the contents of the aforesaid speech. Even the audio cassette allegedly containing the speech of Sadhvi Rithambra is in the same tenor, Even if it is assuemed for the sake of arguments that audio cassette has not been proved in accordance with strict rules of evidence even then the admission is quite clear that Sadhvi Rithambra had been making such like speeches form the platform VHP, which on the face of it are highly inflammatory. One could understand if the effort has been only to require the Government to vigorously follow the family planning programme throughout the country without distinction on the basis of religion, caste or creed but termining all the Muslims as intentionally not following the family planning programme and making all out efforts to increase the Muslim population so as to convert whole of the India into Islam is quite provocative and such provocative speeches do promote the feelings of hatred in the bosome of the Hindus against the Muslims.

One of the audio cassette was proved by PW19, who was working as Head Constable in Rajasthan Police and who deposed that he recorded the speech of Sadhvi Rithambra in audio cassette Ex. PW19|1 and the transcript of the same is Ex. PW19|1A. PW20 Sukhdev Singh, another official working in the office of S.P. Nagore, in 1991 had recorded the speech of Acharya Dharmendra in audio cassette Ex. PW20|1 PW21, an official working as an Inspector in CID in Jodhpur, had recorded the speeches of Swami Parmanand and Sadhvi Ritambra in audio cassette Ex. PW21|1. PW23, Constable working in Special Branch in Bhilwara, had recorded the speeches made at public meetings of Sh. Ashok Singhal, Sadhvi Rithambra, Acharya Dharmendra, Swami Vamdev. PW23|1 is stated to be audio cassette of the speech of Sh. Ashok Singhal. He proved on record copies of the F.I.R. Exs. PW23|2 & PW23|4 under Section 153A against workers of RSS, VHP and BD.

The judgment of the Supreme Court given in the case of Ram Singh (supra) referred at page 195 of my order lays down the pre-conditions which must be satisfied before a tape-recorded statement can be admitted. In the present case, it must be made clear that at no point of time any statement on oath had been made by Sh. Ashok Singhal, Sadhvi Rithambra and Acharya Dharamendra denying their voice appearing in the relevant audio cassettes. When there is no denial of the voices appearing in these audio cassettes of the said leaders the question of leading any evidence to show that those voices are of the any evidence to show that those voices are of the said leaders does not arise.

The fact is that positive evidence has been given by some of the witnesses of the Central Government regarding the identity of the said voices. There is no allegation made that any portion of the audio cassette has been tampered with or any contents of speeches so recorded have been changed. Mere possiblity of such things having been done in audio cassette would not mean that there is presumption that the audio cassettes must have been so tampered with. So, I have no hesitation in holding that these audio cassettes have the speeches of the said leaders.

There appears to have occurred a mistake in the evidence of the witnesses of Central Government as one cassette which was stated to contain speech of Sh. Ashok Singhal as a matter of fact did not contain his speech and one empty cassette appears to have been purchased in November 1992 while it contained speech delivered by Sh. Ashok Singhal in January 1992. It appears that perhaps the original audio cassette in this respect in which the speech was recorded was not produced and perhaps copy had been prepared from the original audlo cassette and has been placed on the record. These questions would have become very material and would have amounted to raising suspicion about the authenticity of the audio cassettes if there has been any denial of Sh. Ashok Singhal who appeared in witness-box regarding any particular audio cassette purporting to contain his speech. At one point of time the learned counsel for the VHP had required for playing of the audio cassette to Sh. Ashok Singhal when he was in the witness box but later on the said request was withdrawn on the plea that audio cassettes are not relevant pieces of evidence. At any rate, by and large speeches made by the leaders of VHP which have appeared in the notification and the resume and the speeches made by Sadhvi Rithambra and Acharya Dharmendra from the platforms of VHP have been proved which-clearly show that speechs are provocative, infilammatory and even abusive to the Muslims generally which promoted or attempted to promote feelings of illwill or hatred against the Muslims in the minds of Hindus generally.

It is pertinent to mention that PW7 has categorically admitted that there was no material evidence to show that these associations had pre-planned the destruction of the disputed structure. It is admitted by PW7 again that a video recording of the events which took place on the fateful day on December 6, 1992, at Ayodhya, was prepared by the IB. For reasons best known to the Central Government the said video cassette has not been produced or proved by the Central Government. In case the same had been produced it might have shown that some sincere efforts were made by the leaders present on the dais on that day or requesting such Kar Sewaks not to cause damage to the disputed structure at all A photo of the mound showing some rehearsal going on for climbing the mound by itself would not, in my opinion, show that in fact, these three associations were behind those Kar Sewaks or people who were carriying on such rehearsal. If such evidence was available to the Central Government even before December 6, 1992,

it is not understandable as to why then all-out efforts were not made for protecting the disputed structure by the Central Government itself. It appears that it was not in contemplation of either the leaders of the three associations or the authorities that harm would be caused to the disputed structure during the Kar Sewa permitted by the Hon'ble Supreme Court on December 6, 1992. Even the White Paper prepared by the Central Government does not support this theory of pre-planning for destruction of the disputed structure by these associations or their workers. For these reasons I have not given much importance to the statement of the aforesaid two witnesses.

I have already referred to the speeches of the important leaders of VHP and speeches of Sadhvi Rithambra, the contents of which, in my opinion, promote or attempt to promote the feelings of illwill or hatred or disharmony between the Muslims and Hindus. Making public statements that the Kar Sewa would involve construction activity as well and that if Kar Sewa was to be thwarted that action would be taken for demolishing 3000 mosques had given rise to feeling of insecurity in the minority community. The leaflets reffered by me above have also used provocative language which promote feeling of hatred against Muslims generally in the hearts of the Hindus. Speeches of Acharya Dharmendra are definitely highly insulting to the tenets of Muslim religion inasmuch as he had put ridicule in the way Muslims pray to God. At no point of time the leaders of VHP took any exception to such speeches being made from their platform by Sadhvi Rithambra and Acharya Dharmendra, rather Sh. Ashok Singhal had found nothing wrong with the words being uttered by Sadhvi Rithambra in her different speeches from the platforms of VHP, rather he has endorsed that VHP was of the same view as Sadhvi Rithambra with regard to the contents of her speech put to him in the cross-examination. So, the VHP cannot be allowed to shirk its responsibility as soon as this Tribunal comes to the conclusion that the contents of such speeches were falling within the purview of Section 153A of the Indian Penal Code. I also hold that the contents of the leaebts mentioned in my order also come within the purview of the said penal Section.

I am not attaching any importance to the statements of PW14 Praveen Jain and PW15 Ruchira Gupta, who have tried to show that some rehearsals took place in Ayodhya by some Kar Sewaks for purposes of demolishing the disputed structure and that leaders present at the dais on December 6, 1992, were only making half-hearted appeals to the Kar Sewaks when they were in the process of demolishing the disputed structure.

Sh. S. C. Dixit, VHP W6, who had worked as Additional IG(IB) in 1976 and then worked as IG and thereafter retired as Director General of UP Police in 1982 and had joined VHP soon after retirement had admitted that during Shila Pujan procession and Shilanyas ceremony in 1989 the counter reaction had come about amongst the fundamentalist Muslims and some of them and stated that no sacrifice would be too precious for the Muslims for protecting the Babri Masjid. He stated that such words were uttered by such Muslim leaders to provoke the Muslim masses but he was emphatically stated that no communal riots took place in the year 1989 due to said movement of Ram Janam Bhoomi. He admitted that earlier Ram Janam Bhoomi movement was purely religious but later on BJP had taken it in its manifesto and it has acquire a political complextion from BJP angle.

Shri Bhartendu Pershad Singhal, RSSW 11, has held high postings in police in Uttar Pradesh and worked as IG of Police in 1983 in Agra Zone and who has been awarded Indian Police Medal for Gallantry for two times and for meritorious service also and for distinguished service a President's Medal. He retired in March 1990. He has joined BJP and is also Member of the National Executive of the BJP.

He has mentioned that he has gone through the testimony of PW 7 and two graphs prepared by him and about first graph Ex. PW 7|1 he mentioned that deaths in communal incidents in 1984 had been shown to be 1200 whereas about 2307 had died in 1984 in Delhi and 3874 has died at other places in the riots which took place immediately after assessination of Smt. Indira Gandhi. So, on this basis he mentioned that the graph Ex. PW 7|1 is not correct. According to him, the Hindu-Sikh riots are communal riots whereas PW 7 has categorically stated that they only treat Hindu-Muslim riots as communal and the graph is in respect of the communal incidents taking place between the Muslims and Hindus. I do not know why this witness has tried to show otherwise.

In the two graphs Ex. PW 7|1 & PW 7|2 the highest peak of communal occurrences are shown in the period September to December 1990. The witness deposed that in only one incident about 593 deaths took place and only four deaths are directly attributable to VHP programmes. He has given chart of such deaths saying that most of the deaths took place on the minor problems and were not related to VHP's Ram Janam Bhoomi movement. He has based his statement on the basis of the replies given to unstarred questions in the Lok Sabha asking for the figures of such communal incidents and he has filed those answers received from the Parliament's Lok Sabha Secretariat Library on the record.

He did not deny the suggestion that after demolition of the disputed structure curfew in 155 places, prohibitory orders in 350 places and deployment of 800 companies of para military forces and army being deployed in aid of the civil authorities all over the country took place. He admitted that said steps were never taken in such high scale to control the communal situation since dawn of independence. He admitted that there occurred low threshold of tolerance between the members of the two communities. According to him, this has occurred because of the appeasement policy being pursued to favour the Muslims inasmuch as Shah Bano's Case was reversed by bringing a legislation and Muslim holidays being increased at the cost of Hindu holidays.

It is evident that when low threshold of tolerance persists in the two communities even any minor incident may result ino a big communal flair up in a particular area amongst two communities.

He admitted that communal incidents had touched all time high peak in 1989 due to incidents of communal riots. He however, denied that such high peak was reached due to VHP's programmes pertaining to Ram Janam Bhoomi movement. Again he gave details about the appeasement policy being pursued by the Government to pamper the Muslims to preserve their vote bank. It is not disputed that Bajrang Shakti Dalsha Samaroh was held in July 13—14, 1989 at Ayodhya and Indra Prastha Dharma Yatra took place on September 17—21, 1989 and Virat Hindu Sammelan in September 22, 1989, at Delhi and Shila Pujan Maha Yagnā took place in between September to November 8, 1989 and Shilanyas ceremony took place on November 9—10, 1989. He denied that these programmes had brought about incidents of high peak of communal violence in 1989.

He admitted the possibility that in the year 1990 the close scrutiny of the pattern of the violence indicated that Muslims were aggressive in 488 cases while Hindus were aggressive in 368 cases. He admitted that in the communally sensitive districts both the communities resorted to stock piling of arms, explosives, brickbats etc. and he has also not disputed the possibility that in the incidents which took place in the year 1990 both the communities had resorted to firing and stabbing and bomb explosions and arson. He also did not over-rule the possibility that large scale pamphleteering, leafleteering and playing of audio and video cassettes vitiated the communal atmosphere.

He admitted that in the year 1991 the communal riots took place in Gujarat during observance of Muharram and in Gujarat and Andhra Pradesh during observance of Ganesh festival and in Cuttack City on festivals of Dussehra, Durga Puja Navratri and at Varanasi during Diwali and Kali Puja. He admitted that there have been instances where large quantities of ammunitions and explosives had been recovered from mosques.

The material and evidence, which had been discussed above, do show that the Ram Janam Bhoomi movement being aggressively pursued by VHP and inflammatory speeches being made from the platforms of VHP and press releases and leaflets being issued by the leaders of VHP did promote the feelings of enmity and illwill towards the Muslims generally and thus, it has to be held that there is sufficient cause for declaring the VHP as unlawful organization.

The contention of the learned counsel for the VHP that ban has been imposed under the pressure of the Muslim Legislators and Muslim leaders and also Left Parties and certain hawkish elements in the Ruling Party and thus, it is a political ban and there has been no application of mind by the concerned authorities in imposing the ban and it is malafide exercise of the discretion by the Central Government.

Mere fact that demand was made by such leaders and parties for imposing ban on communal organizations, it is no ground to hold that Central Government has not exercise the discretion in a bonafide manner. The large scale communal riots had taken place as aftermath of demolition of the disputed structure. So, it cannot be said that the Central Government had no material for exercising its independent discretion in deciding to impose ban on the communal organizations.

It is true that on December 7, 1992, the Government had given out that ban would be imposed on communal organizations but that would not mean that Government had already made up its mind as to which particular communal organizations were to be banned. It was a tentative decision taken and formalities were carried out by the Government for imposing the ban on particular communal organizations after the material was made available by the IB.

The cotention that allegation of the VHP regarding the malafide of the Government in imposing the ban has not been transversed in the rejoinder and thus it should be held that there is admission of this fact which vitiates the notification, does not appeal to reason. Mere mentioning that other parties and leaders had asked for imposing the ban on communal parties and this fact being not denied, does not mean that it stands proved that it was malafide exercise of the discretion by the Central Government in imposing the ban and that the Central Government had not itself considered the question of imposing the ban and had passed only a mechanical order. There is no dispute about the principles enunciated in the case of Maharaja Dharmender Pershad Singh (supra) as to how the discretion is to be exercised by any authority and how such discretion would stand vitiated if it is not based on any material and it is not exercised in good faith, but such is not the case here.

The contention that such a huge material could not have been collected in one hour and could not have been perused by PW18 in one hour in preparing the note and the annexures is only in the realm of hypothecation. The IB reports which must have been produced by PW7 alongwith the supporting material if perused could have given indication of the supporting material and there is nothing impossible in making available such IB reports and material already available with the IB to PW18 in one hour and PW18 preparing the note and the annexures in another hour. It is evident that there was material available on the basis of which some particulars have been incorporated in the notification of VHP. If no such material had been available it could not have been possible to incorporate even those particulars in the said notification.

In the present case it is PW18 who had issued the notification and had appeared in the witness box. So, it cannot be said that a proper person who was instrumental in forming the opinion of behalf of the Central Government has not been examined as a witness. So, nothing laid down in the case of Shaik Hanif (supra) is applicable to the present matter. The judgments given by Bombay High Court in the cases of Madholal and Mohd. Yusuf (supra) are not applicable because they are based on application of strict rules of evidence in a court. The law laid down in the case of Gopal Vinayak (supra) is also not applicable because that case is based on its own peculiar facts and has nothing in common with the matter arising for decision before this Tribunal.

The law laid down by the Lahore High Court in the case of Raj Paul (supra) where in pamphlet which made scurrilous and offensive attack on the founder of Islam was held to be not coming in the purview of Section 153A is no longer good law as Division Bench of the same High Court in the case of Devi Sharan Sharma Vs. Emperor AIR 1927 Lahore 594, had taken a different view.

Both these judgments came to be analysed by a Special Bench of the Allahabad High Court in Lal Singh Yadav Vs. State of UP, 1976 Cri. L.J. 98. It was held in this judgment that law does not require that the objectionable matter must be proved to be factually incorrect or unsustainable. It is sufficient for the applicability of Section 99A that the passages, though based on some source of authority, are likely to hurt the traditional beliefs of a class and occasion the consequence contemplated by Section 153A and Section 295A. It was held that the intention is not a necessary ingredient. The words in the book which was prescribed were bound to inflame the minds of Hindus of the Vaishnav Sampradaya and promote dissensions and animosity. It was found that the things sacred to Vaishnav Hindus have been treated and handled by the author with profound irreverence and wards used by him were blasphemous. It is held that due to mis-interpretation of the verses a scurrilous attack was made on Hindu Gods like Brahma. In the same very judgment Shukla, J. analysed the meanings of various verses which were quite profound and it was found disqusting that the author had given such base meanings to such verses to hurt religious feelings of the said class of Hindus. Certain observations made in the case of R. Vs Boulter at page 113 were approved by the Special Bench. Those observations were as follows :

> "A man is free to speak and teach what he pleases as to religious matters, though not as to morals. He is free to teach what he likes as to religious matters even if it is unbelief. But when we come to consider whether he has exceeded the limits, we must not neglect to consider the place where he speaks, and the persons to whom he speaks. A man is not free in a public place where passers-by who might not willingly go to listen to him knowing what he was going to say, might accidentally hear his words, or where young people might be present. A man is not free in such places to use coarse ridicule on subjects which are sacred to most people in the country. He is free to use arguments."

The Special Bench of the Allahabad High Court in the case of Kali Charan Sharma Vs. Emperor, AIR 1927 Allababad 649, has laid down that the intention of the writer of a book must be judged primarily by the language of the book itself and if the language is of a nature calculated to produce or to promote feelings of enmity or hatred the writer must be presumed to intend that which his act was likely to produce. It was further laid down that it must be recognized that in countries where there is religious freedom a certain latitude must of necessity be conceded in respect of the free expression of religious opinions together with a certain measure of liberty to criticise the religious beliefs of others, but it is contrary to all reason to imagine that liberty to criticise includes a licence to resort to vile and abusive language.

REPLY OF VHP

Reply of VHP, while giving additional submissions at page 549, has used the following words :

> "The Muslim fundamentalism continues unabated. They hardly need any practice to start loot, arson and destruction of our property and our temples when Mr. Bhutto was hanged, Hindus were murdered in Kashmir and 54 temples were destroyed in Kashmir. Hindus were attacked in different part of the country when Zia Ul Haque died in an air crash, Muslims indulge inviolence to exhibit their anger in this country for a book written by Salman Rushdie of U.K. Property worth crores of rupees were destroyed because of a story of one Mohammad published in a newspaper which story had nothing to do with the Prophet. Aggression on Hindus has become a part of their daily exercise and during the Hindu religious processions hardly a day passes when they are not attacked"

and also at page 550 as follows :

> "It is this appeasement which has prompted the Muslims to collect illegal arms in the places

of workship and use them from time to time..... It is this appeasement that has prompted the Muslims to defy the National Anthem, State tricolour flag and their hatred for the country and the same is exposed when there is Cricket Match between Pakistan and Bharat when the Muslims shamelessly express heir cheers at the victory of Pakistan and mourn its defeat by burning and looting Hindu houses and shops to show their anger."

Again at page 551 :

"Hindus consider cow as their divine mother and abode of all Gods and Goddesses. They worship cow as such but the Muslims choose to hurt the Hindu susceptibility by butchering cow and taking pride and happiness, feeling glory in might of Islam. Within the country the Muslim opposes Hindi in the name of Urdu. He counters cow protection with butcher's right. He opposes Vande Matram dubbing into signify ideplatory."

These allegations have been mad against Muslims generally. The allegations are not confined to only some of the Muslims who may be fanatics or fundamentalists or obstructionists. These allegations by themselves show a deep rooted hatred against Muslims being nourished by VHP.

The ratio laid down in Mohinder Singh Gill's Case (supra) that when a statutory functionary makes an order based on certain ground its validity must be adjudged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, would be applicable if notification is challenged under Article 226. If order is made obviously on a particular ground and reasons are given for making that order in the order itself, obviously the valldity of the said order has to be examined in the light of the reasons already given in the order.

Such is not the case as far as present notification is concerned because the statute itself requires the Tribunal to adjudicate in respect of the notification and decide whether or not there is sufficient cause for declaring the association as unlawful. So, the scop of the inquiry before the Tribunal as has been already analysed by me entitles the Tribunal to look to the material and evidence produced before the Tribunal in support of the grounds mentioned in the notification. So, the principle laid in the case of Mohinder Singh Gills case would not apply in this matter.

It is true that mere criticism of the Government or Ruling Party's policies would not bring the same within the purview of Section 153A because in a democratic country where freedom of speech is enshrined as a fundamental right the citizens have right to criticise each and every policy of the Government but here the question is not that there is only criticism of the alleged Government's policy of appeasement of the minority community. Here is a question of making speeches and distributing leaflets and pamphlets which are inflammatory and provocative in nature which are generally against the Muslims which promote the feelings of hatred, enmity and illwill amongst the two major communities of this country which definitely come within the purview of Section 153A. While criticising the policy of appeasement of the Government the speeches ought not to have tarnished the Muslims generally in back colours giving them feeling that they are not true patriot citizens of this country.

As far as alleged policy of appeasement of minority followed by the Congress Ruling Party since dawn of independenec, it is not possible to give any judicial finding on such a policy because such a policy is in a political arena. The Ruling Congress Party may feel that it is not following any such policy of appeasement and rather it is following the policy of taking measures which are beneficial to the large section of this vast country which also includes minorities in the shape of religion and castes.

The provisions in the Constitution cannot be termed as giving any favour to any minority community or to majority community. The Constitution is the basic law of this country and the Tribunal has no function to say that constitutional provisions ought to have been framed differently. So, the presence of Article 370 in the Constitution of India cannot be shown to be brought into the Constitution as a favour to any particular community. There is nothing sacrosanct about the presence of that Article in the Constitution and the same also does not involve any basic structure of the Constitution so that it could be immune

to any amendment which may be brought about in accordance with constitutional provisions. It is one thing to say that a particular Article of the Constitution should be amended and efforts to be made by the different political parties in that regard, but it is another thing to say that Article 370 has been put into Constitution to favour the Muslim community.

Reference to Shah Bano's Case is also misplaced. It is the Parliament which has passed the law which had changed the foundations of the judgment of the Supreme Court. If certain political parties or other citizens of this country feel that the law is in violation of the Directive Principle of State policy laid in the Constitution, they have a right to seek amendment of the law to bring it in conformity with the Directive Principle of the State. A broad side view cannot be taken that the legislation enacted by the Parliament is in pursuance to any policy of appeasement and any volatile propaganda can be launched against such policy if the same promotes or attempts to promote feelings of enmity or hatred or illwill or disharmony amongst the various religious communities. There are no facts placed before this Tribunal from where the allegations made by the respondents could be verified that some of the Muslims who were aggressors in causing the communal riots and had been killed or injured by security forces had been given doles by the Central Government again as a measure of appeasement policy favouring the Muslim community.

Every political party wishes to have as large votes of citizens as possible and every political party adopts political agenda to its own way of thinking to persuade and convince the citizens to become its vote banks. A healthy atmosphere has to be maintained in the country for propagating such political agenda by respective political parties but if some association or organization or even a political party takes into its head to make speeches, slogans and issue pamphlets and make a propaganda at a high pitch using provocative, vituperative and insulting language which promote or attempt to promote feelings of illwill, hatred or disharmony amongst the communities in this country then rigours of law come into play.

By itself the Ram Janam Bhoomi movement could be termed as laudable as far as Hindus are concerned and if the movement had been carried on within the permissible legal parameters peacefully, there could arise no occasion for imposing a ban on any association or organization spearheading such movement. There is no legal bar in such organizations or associations in launching movements in respect of other holy places but if such movements are given such high momentum which promote the feelings of hatred or illwill amongst the religious communities or sects, the law has to intervene.

The VHP cannot say that because Sadhvi Rithambra and Acharya Dharmendra are not members of VHP, so their alleged provocative speeches against Muslims could not furnish any ground for imposing the ban on VHP. Those speeches were made from the platforms of VHP, not once but a number of times. If VHP was not taking responsibility for such speeches, they should not have allowed such speeches being made repeatedly from its platforms in this Ram Janam Bhoomi movement. The said speeches by themselves are not to be treated as independent ground. As already discussed by me above, the ground given in the notification is one. The speeches mentioned in the notification are some of the particulars and other particulars and facts have been given in the Resume. So, it cannot be said that any fresh ground is sought to be proved by the Central Government by referring to the said speeches of Sadhvi Ritambhra and Acharya Dharmendra in support of the ban imposed on the VHP.

It has been strenuously contended before me by the learned counsel for the respondents that the main cause for the communal holocaust which occurred as an after math of demolition of the disputed structure has been the speech of the Prime Minister wherein he described the disputed structure as a mosque which gave wrong impressions to the muslim masses and in case truth had been broadcast regarding the actual status of the disputed structure, perhaps the communal riots at such a large scale might not have taken place.

It is no possible to countenance this contention for the reason that the emotions with regard to the disputed structure had already heightened during the vigorous Ram Janm Bhoomi movement being carried out through the length and breadth of the country and the muslim leaders of different hues had already taken up the cudgels in resisting any damage to the disputed structure.

I have already referred to the speeches of the most of the leaders of V. H. P. prior to demolition of the disputed structure which left no room for doubt that the Kar Sewa which was to take place on December 6, 1992 was meant to be for the construction of Lord Ram's Temple at the place where the disputed structure stood. It is true that in accordance with the orders of the Hon'ble Supreme Court, a few days prior to December 6, 1992, advertisements had been issued not only in the newsapers but also on Television and Radio informing the people that no construction activity would be carried out during the Kar Sewa but the fact remains that the followers of V. H. P., Bajrang Dal and R. S. S. were being informed through the speeches delivered by V. H. P. leaders that against all odds, the Kar Sewa would take place and Sh. Giri Raj Kishore had gone to the extent of even proclaiming that if any resistence is offered to the Kar Sewa, then action would be taken in respect of other 3000 similar mosques which had been allegedly constructed in place of temples. It may be that V. H. P. and others, on December 5, 1992, had taken a final decision for performing only symbolic Kar Sewa on December 6, 1992 and the Kar Sewaks, who had assembled in large number, were also informed by the leaders with regard to the same but some of the kar sewaks obviously felt frustrated with this change of stance and took in their heads to proceed further and demolish the disputed structure itself. The moral responsibility for the demolition of the disputed structure squarely rests on the shoulders of the leaders of V. H. P. This demolition of the disputed structure took place despite assurances having been given not only to the Hon'ble Supreme Court but also to all persons concerned that no damage shall be caused to the disputed structure during the Kar Sewa and no order of the Court shall be violated. So, it would be too simplicitic to say that the communal riots which took place following the destruction of the disputed structure were due to any speech of the Hon'ble Prime Minister in describing the disputed structure as a mosque.

It is really painful that with this ban which is to continue for a statutory period even the laudable objects being pursued by the VHP would stand disrupted for some period. I hope that if the things get calmed and the leaders of the VHP realise their responsibility that no such inflammatory and provocative speeches are to be made and no such provocative leaflets and pamphlets are to be issued in future, the Central Government may suo motu examine the question of lifting the ban as early as possible.

CASE AGAINST BAJRANG DAL

As far as notification declaring Bajrang i Dal as unlawful association is concerned, the first ground mentioned is that the Bajrang Dal has been encouraging and aiding its followers to promote or attempt to promote on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious communities. These are the words taken from the statute and the primary facts relied upon in constituting the aforesaid ground are that the Bajrang Dal has been organising exercises, drills or other similar activity intending that the participants in such activities shall use criminal force or violence or knowing it to be likely that the participants in such activities will use criminal force or violence against other religious communities. Again, these allegations also do not amount to disclosing any primary facts constituting the ground. These are again the words of the statute taken from Section 153-A(c).

Only primary facts which could go to constitute the ground mentioned in the opening of the notification are that the members of Bajrang Dal had participated in the demolition of the structure commonly known as Ram Janm Bhoomi Babri Masjid situated in Ayodhya in the State of Uttar Pradesh on December 6, 1992.

Even otherwise, it is not established that Bajrang Dal had planned the demolition of the disputed structure. May be there is moral responsibility of the banned associations also for the demolition of the disputed structure but that is not a legal ground for imposing the ban.

No other ground has been mentioned in the notification. The learned counsel for the Central Government has referred to the contents of the reply filed by Bajrang Dal to the show-cause notice which according to him are sufficient to impose a ban on Bajrang Dal. I have already held that the Tribunal has to ad-

judicate only on the grounds mentioned in the notification in order to decide whether or not there is sufficient cause for declaring a particular association as unlawful. The ground which is furnished by the contents of the reply of Bajrang Dal is a new ground dehors the notification and thus, the Tribunal cannot hold that there is a sufficient cause for declaring Bajrang Dal as unlawful association for confirming the notification. The Tribunal has to either confirm the notification or cancel the same but has no power to issue any fresh notification on any new ground for imposing the ban. That is the function of the Central Government.

I have already held that the plea raised in the resume that Bajrang Dal is the front organisation of V. H. P. cannot be examined as no such ground has been raised in the three impugned notifications. So, I hold that there is no sufficient cause for declaring Bajrang Dal as unlawful association on the basis of the grounds mentioned in the notification and thus, the notification against the Bajrang Dal is liable to be cancelled.

CASE AGAINST THE R. S. S.

As far as R. S. S. is concerned, it was alleged in the notification that R. S. S. has been encouraging and aiding its followers to promote or attempt to promote on grounds of religion disharmony or feelings of enmity, hatred or ill-will between different religious communities. This is just reproduction of the provisions of Section 153-A(a). The primary facts given in respect of this ground are that R. S. S. has been making imputations and assertions and that members of certain religious communities have alien religion and cannot, therefore, be considered nationals of India thereby causing and likely to cause disharmony or feeling of enmity or hatred or ill-will between such members and other persons.

The learned counsel for the Central Government has mainly relied on the evidence and material showing that V. H. P. is the front organisation of R. S. S. and Bajrang Dal is the front organisation of V. H. P. and all these associations are inter-linked and so, as the activities of V. H. P. are such which come within the purview of Section 153-A of Indian Penal Code, hence vicariously R. S. S. also comes within the purview of said Section.

I have already held that the plea of Central Government for the first time taken in the resume that these three associations are inter-linked is a new ground which has not been taken up in the notifications and the same cannot be made basis for upholding the ban. There appears to be no material or evidence independent of that particular plea to prove the grounds mentioned in the notification.

Another fact mentioned in the notification is that R. S. S. swayamsewaks had participated in the demolition of the structure commonly known as Ram Janm Bhoomi Babri Masjid. For the reasons given in respect of notification pertaining to Bajrang Dal above, I hold similarly that ban cannot be justified on these facts.

No other particulars or facts have been given against R. S. S. even in the resume by which the ground mentioned in the notification could be supported. Sh. Anand has not referred to any such evidence and material in support of the ground mentioned in the notification. So, it is not necessary to refer to various contentions raised by counsel for the parties with regard to proving as a fact as to whether these associations were inter-linked or not.

For the above reasons, I hold that there is no sufficient cause for declaring the R. S. S. as unlawful association and the notification in question in respect of R. S. S. is liable to be cancelled.

ORDER

S.O. 900(E) Dated December 10, 1992, published in the Gazette of India : Extra Ordinary [Part II—Section 3—Sub-Section (ii)]

For the reasons discussed above, I decide that there is sufficient cause for declaring the Vishwa Hindu Parishad association to be unlawful and I confirm the declaration made in the aforesaid notification.

S.O. 901(E) Dated December 10, 1992, published in the Gazette of India : Extra Ordinary [Part II—Section 3—Sub-Section (ii)]

For the reasons given above, I decide that there is not sufficient cause for declaring the Rashtriya Swayamsewak Sangh association as unlawful and I cancel the said declaration made in the aforesaid notification.

S.O. 902(E) Dated December 10, 1992, published in the Gazette of India : Extra Ordinary [Part II—Section 3—Sub-Section (ii)]

For the reasons given above, I decide that there is not sufficient cause for declaring the Bajrang Dal association as unlawful and I cancel the said declaration made in the aforesaid notification.

June 4, 1993
Sun|jik

Sd|-
P. K. BAHRI, Chairman
Unlawful Activities
(Prevention) Tribunal

[F. No. II|12034|74|93-IS(DV)]
T. N. SRIVASTAVA, Jt. Secy. (NI)

Printed by the Manager, Govt. of India Press, Ring Road, Maya Puri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054, 1993